

**DETERMINATION OF MERGER
NOTIFICATION M/18/063 -**

**BERENDSEN (ELIS) / KINGS
LAUNDRY**

Dated 8 July 2019

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1. INTRODUCTION

Introduction

- 1.1 On 7 August 2018, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (“the Act”), the Competition and Consumer Protection Commission (the “Commission”) received notification of a proposed transaction whereby Berendsen Ireland Limited (“Berendsen”) would acquire sole control of Kings Laundry Limited (“Kings Laundry”) (the “Proposed Transaction”). Berendsen is ultimately controlled by Elis S.A. (“Elis”).
- 1.2 The Proposed Transaction is to be implemented pursuant to a Sale and Purchase Agreement (“SPA”) dated 25 July 2018 between Berendsen and Oranday Holdings Limited, Coconutcove Limited and Fenbrook Nominees Limited¹ (collectively the “Vendors” and each a “Vendor”).² Pursuant to the SPA, Berendsen would acquire the full legal and beneficial ownership of the entire issued share capital of Kings Laundry.

The Undertakings Involved

The Acquirer - Berendsen³

- 1.3 Berendsen is an indirect wholly-owned subsidiary of Elis. Elis is a public limited company listed on the Euronext Paris stock exchange. Elis specialises in the rental and maintenance⁴ of flat linen,⁵ professional garments (i.e., workwear) and hygiene and wellness equipment across Europe and Latin America.
- 1.4 Within the State, Elis carries out almost all its activities through Berendsen. Berendsen’s activities can be summarised as follows:
- rental and maintenance of workwear to customers in various sectors;⁶
 - rental and maintenance of flat linen to customers in the healthcare⁷ and the hospitality⁸ sectors;
 - rental and maintenance of mats;
 - rental and maintenance of mops;

¹ Fenbrook Nominees Limited is the legal owner of a shareholding in Kings Laundry of which the beneficial owner is [...].

² These three Vendors are collectively the legal and beneficial owners of the entire issued share capital of Kings Laundry.

³ Elis acquired full ownership and control of Berendsen on 12 September 2017. The Berendsen business, including Berendsen Ireland Limited was rebranded as Elis on 25 June 2018. See <https://ie.elis.com/insights/news/ie/berendsen-continues-under-the-name-elis/>.

⁴ The term maintenance refers to the collection and processing (i.e., sorting, washing, drying, ironing, folding and packing) of used and soiled items and the delivery of clean items. Items may also be repaired as part of maintenance.

⁵ Flat linen is an industry term describing offered linen products including flat-ironed bed sheets, pillowcases and tablecloths.

⁶ For example, Berendsen provides workwear to customers in the construction and manufacturing sectors.

⁷ Customers in this sector include acute hospitals, specialist hospitals, private hospitals, care homes and nursing homes.

⁸ Customers in this sector include hotels, ferries, hostels, restaurants, guesthouses, leisure centres/spas and golf clubs.



- rental and maintenance of cleanroom garments to organisations operating cleanrooms such as pharmaceutical and high-tech industries;⁹ and
- provision of washroom services.¹⁰

1.5 Berendsen operates eight facilities in the State, [...] of which cater for the maintenance of flat linen.¹¹ Berendsen Northern Ireland Limited operates one facility in Northern Ireland.

1.6 For the financial year ending 31 December 2017, Elis had a worldwide turnover of approximately €2.21 billion, of which €[...] was generated in the State.¹²

The Target – Kings Laundry

1.7 Kings Laundry, a private limited company registered in the State, provides rental and maintenance of flat linen to customers in the healthcare and the hospitality sectors.¹³

1.8 Kings Laundry operates two facilities in the State catering for the maintenance of flat linen.¹⁴

1.9 For the financial year ending 31 December 2017, Kings Laundry had a worldwide turnover of approximately €[...], of which €[...] was generated in the State.¹⁵

Rationale for the Proposed Transaction

1.10 The Parties¹⁶ stated the following in the notification:

“The Proposed Transaction is an additional step in Elis’ development in Ireland. It complements Elis’ existing operations in Ireland and enables Elis to offer services to a wider range of customers in combination with a well-known player.”

Phase 1: Preliminary Investigation (“Phase 1”)

Contacts with the Parties

1.11 On 14 September 2018, the Commission served a Requirement for Further Information (“First RFI”) on Berendsen and Kings Laundry, pursuant to section 20(2) of the Act. This

⁹ These customers operate within environments controlled for particular contaminants, such as dust, airborne microbes, aerosol particles and chemical vapours (cleanrooms).

¹⁰ Berendsen provides products such as toilet paper, soap dispensers and hand sanitizer.

¹¹ These [...] facilities are located at [...].

¹² According to the parties, [...].

¹³ According to the parties, revenues from customers in the hospitality sector account for approximately [...] % of Kings Laundry’s turnover.

¹⁴ These two facilities are located in South City Business Park, Tallaght, Dublin 24, D24 NV2T and Unit 25, GB Business Park, Little Island, Cork, Co. Cork T45 NW20.

¹⁵ The remaining turnover was generated in [...].

¹⁶ Throughout this Phase 2 Determination the Commission refers to Berendsen and Kings Laundry collectively as “the Parties”.

adjusted the deadline within which the Commission was required to conclude its assessment of the Proposed Transaction in Phase 1.

- 1.12 Upon receipt of all of the responses to the RFI, the “appropriate date” (within the meaning of section 19(6)(b)(i) of the Act) became 30 November 2018.¹⁷
- 1.13 During the Phase 1 investigation, the Commission requested and received, on an on-going basis, further information and clarifications from the Parties.

Third Party Submissions

- 1.14 No third party submission was received by the Commission during the Phase 1 investigation.
- 1.15 During the Phase 1 investigation, the Commission circulated questionnaires¹⁸ and carried out follow-up communication with various third parties, including:
- a number of competitors of Berendsen and Kings Laundry that are or were active in the supply of rental and maintenance of flat linen in the State and Northern Ireland as identified by the Parties in the Merger Notification Form¹⁹ (“Competitors”);²⁰
 - a number of customers in the healthcare and hospitality sectors that purchase rental and maintenance of flat linen services (“Customers”).²¹ The Parties identified these customers as their largest customers in terms of turnover;²²
 - a number of hotels currently operating their own on-premise laundries (“OPLs”) as identified by the Parties in the Merger Notification Form (“Self-suppliers”);²³ and
 - A number of hospitals currently operating their own on-premise laundries (“OPLs”) as identified by the Parties in the Merger Notification Form (“Self-suppliers”).²⁴
- 1.16 The Commission received a response from the majority of the third parties to whom it sent a questionnaire (81%²⁵). In each case, the Commission also contacted those third parties by telephone and/or e-mail to clarify and/or seek further detail in relation to their responses. Customers’ and Self-suppliers’ responses are summarised in Appendix 1 of this Phase 2 Determination.

¹⁷ The “appropriate date” is the date from which the time limits for making both Phase 1 and Phase 2 Determinations begin to run.

¹⁸ Through the remainder of this Phase 2 Determination, these questionnaires will be referred to as “Questionnaire to Competitors”, “Questionnaire to Customers” and “Questionnaire to Self-suppliers”.

¹⁹ Merger Notification Form refers to the merger notification form relating to the Proposed Transaction, as was submitted to the Commission on 7 August 2018.

²⁰ These are: [...].

²¹ These are: [...].

²² The Customers which responded to the questionnaire account for approximately [...] % and [...] % of Kings Laundry’s turnover and [...] % and [...] % of Berendsen’s turnover, in healthcare and hospitality sectors respectively.

²³ These are: [...]. Moreover, the Commission contacted [...] seeking to visit its OPL.

²⁴ These are: [...]. Moreover, the Commission contacted [...] seeking to visit its OPL.

²⁵ 34 out of 42 third parties.



The Phase 1 Determination

- 1.17 Having considered all the available information in its possession at the time, the Commission was unable to form the view at the conclusion of the Phase 1 investigation that the result of the Proposed Transaction would not be to substantially lessen competition in any market for goods or services in the State.
- 1.18 On 9 January 2019, the Commission determined, in accordance with section 21(2)(b) of the Act, to carry out a full investigation under section 22 of the Act in relation to the Proposed Transaction.

Phase 2: Full Investigation (“Phase 2”)

Contacts with the Parties

- 1.19 During the Phase 2 investigation, the Commission requested and received further information and clarifications from the Parties.
- 1.20 On 18 January 2019, the Parties submitted two reports relating to the competitive constraints posed by: (i) OPLs operated by healthcare and hospitality organisations (the “Report on OPLs”); and (ii) Celtic Linen (the “Report on Celtic Linen”).
- 1.21 The Commission conducted site visits to facilities of both Berendsen and Kings Laundry. The Commission visited Kings Laundry’s Cork facilities on 13 February 2019 and its Dublin facilities on 6 March 2019. The Commission visited Berendsen’s Dublin facilities on 14 February 2019.
- 1.22 On 12 February 2019, the Commission served a Requirement for Further Information (“Second RFI”) on Berendsen and Kings Laundry, pursuant to section 20(2) of the Act. Berendsen fully responded to the RFI on 27 February 2019 and Kings Laundry fully responded on 8 March 2019. This adjusted the deadline within which the Commission was required to conclude its determination of the Proposed Transaction in Phase 2.
- 1.23 The Commission issued its Assessment to the Parties on 28 March 2019 in accordance with its Mergers and Acquisitions Procedures.²⁶
- 1.24 The Parties requested access to the Commission’s file.²⁷ According to the Commission’s procedures,²⁸ the Parties are to be given access to the Commission’s file upon request, during the 15 working day period following their receipt of the Commission’s Assessment. The Commission provided the Parties with a schedule of all of the documents included in the file on 1 April 2019 and access to the file was granted during the 15 working day period.
- 1.25 During the Commission’s access to the file process, the Parties identified several documents of interest to them to which they had been granted partial access and to which they requested full access. Information that was confidential to third parties had

²⁶ See the Commission’s document titled “*Mergers and Acquisitions Procedures*”, dated 31 October 2014 and in particular paragraph 3.8.

²⁷ Berendsen made request on 29 March 2019, and Kings Laundry made request on 3 April 2019.

²⁸ Article 5.1, of the Commission’s document titled “*Access to the File in Merger Cases*”, dated 31 October 2014



been redacted in the version of the documents provided to the Parties and could not be released without the consent of the relevant third party. However, in order to ensure that the Parties had access to all the information they required to understand and address the concerns raised in the Commission's Assessment, the Commission issued non-confidential summaries of these confidential materials to the Parties. The Commission also provided non-confidential summaries of any information on which it had relied in the Assessment and any information that could be exculpatory in the Parties' defence. In parallel, the Commission sought the consent from the relevant third parties to disclose their confidential information to advisors of the Parties under certain terms. Confidential information was disclosed where written consent was given by a third party.

- 1.26 The Parties made a joint written submission on 25 April 2019 in response to the Commission's Assessment (the "Parties' Response"). The Parties' submission included a submission by Frontier Economics (the "Frontier Economics Report").
- 1.27 The Parties, having regard to confidentiality requirements, made a joint oral submission to Commission Members on 3 May 2019 at which they and their legal and economic advisors participated in the oral submission.
- 1.28 Following the oral submissions on 3 May 2019, the Commission made additional market enquiries to address several points raised by the Parties in their written and oral submissions. The Parties were given access to all additional information gathered in this regard. The Parties were also given the opportunity to make further submissions, which they did in writing on 28 May 2019 and 4 June 2019, and orally on 29 May 2019.²⁹
- 1.29 During the Phase 2 investigation, the Commission held various meetings and conference calls with the advisors of the Parties to discuss identified competition concerns and how they would be addressed.

Phase 2 Proposals

- 1.30 The Proposed Transaction concerns the acquisition of the whole of Kings Laundry's business: that is, the supply of outsourced flat linen rental and maintenance services to both the hospitality and the healthcare markets. On completion of the Phase 2 review, the Commission has found that the Proposed Transaction will likely result in an SLC only in the healthcare market.
- 1.31 Following several engagements with the parties to discuss the identified SLC concerns in the healthcare market, Berendsen, on a without prejudice basis, submitted proposals on 14 June 2019 (the "First Proposals") pursuant to Section 20(3) of the Act. The submission of these proposals by Berendsen extended the deadline within which the Commission was required to make its determination of the Proposed Transaction in Phase 2. The extension added 15 working days to the Phase 2 period, bringing the review period to a total of 135 working days, in accordance with section 22(4B) of the Act. In the First Proposals Berendsen committed to either behavioural commitments, or to the divestment of certain contracts.

²⁹ Further submissions are referenced in the Determination as "Parties' Letter" and the appropriate date.



- 1.32 The Commission rejected the First Proposals on the basis that they were inappropriate and insufficient to address the identified SLC concerns in the healthcare market. In light of this, the Commission did not find it necessary to market test the First Proposals.
- 1.33 On 24 June 2019 Berendsen, on a without prejudice basis, submitted revised proposals (the “Second Proposals”) to the Commission committing to dispose of a package of healthcare contracts, [...].
- 1.34 The Commission considered that there were implementation risks associated with the Second Proposals which would render the remedy ineffective if they materialised. However, subject to the Parties addressing those implementation risks, the Second Proposals provided a divestment package which the Commission could market test.
- 1.35 Over the period 25 June to 1 July 2019, the Commission market tested the Second Proposals in order to establish whether they were likely to be appropriate, proportionate and effective in addressing the identified SLC concerns in the healthcare market. A summary of the results of the market testing is provided in paragraphs 5.8 to 5.13.
- 1.36 While the Commission considered that the substance of the Second Proposals may have addressed its competition concerns, it had significant remaining concerns regarding the implementation of the measures. These were post-completion proposals that posed serious implementation risks. The Commission engaged extensively with the Parties in relation to these concerns. Ultimately, however, the Parties were unable to address the implementation risks associated with the Second Proposals.
- 1.37 On 8 July 2019, Berendsen submitted a revised set of proposals (the “Third Proposals”). The Commission considers that the Third Proposals submitted by the Parties address its SLC concerns in the healthcare market (the “Proposals”). The Proposals are included as Chapter 9 in this Determination. The divestment of a package of healthcare contracts as described in the Proposals will allow the approved third party purchaser to provide effective competition to the merged entity and Celtic Linen. Berendsen’s commitment to refrain from completing the Proposed Transaction until it has completed the divestment of the healthcare contracts addresses the Commission’s concerns regarding implementation risks.
- 1.38 The Commission has taken the Proposals into account and, in light of the Proposals (which form part of the basis of the Commission’s determination) has determined, in accordance with section 21(2)(a) of the Act, that the result of the proposed acquisition whereby Berendsen would acquire sole control of Kings Laundry will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

Contacts with Competitors

- 1.39 During the Phase 2 investigation, the Commission extended the investigative work undertaken during Phase 1, and carried out a site visit to [...] facilities on 21 February



2019 and a site visit to [...] facilities on 8 May 2019. The Commission also held further phone calls with a number of Competitors: [...] ³⁰, [...] ³¹, [...] ³², [...] ³³ and [...] ³⁴.

Contacts with customers and other third parties

- 1.40 During the Phase 2 investigation, the Commission had further contact with third parties, including customers in the healthcare and hospitality sectors, the Office of Government Procurement (the “OGP”), suppliers of laundry equipment,³⁵ and the National Standards Authority of Ireland (the “NSAI”). The Commission also carried out a site visit to a hotel which operates an OPL.³⁶
- 1.41 The Commission commissioned Amárach Research (“Amárach”) to conduct a survey of customers in both the hospitality and healthcare sectors (the “Amárach Survey”) to inform its investigation, and to supplement the Market Enquiries undertaken directly by the Commission. Amárach contacted randomly selected organisations operating in the healthcare and hospitality sectors. Amárach Survey’s sample excluded organisations already contacted directly by the Commission in the course of its own Market Enquiries. As noted in paragraph 1.15 above, the organisations contacted directly by the Commission included those identified by the Parties in the Merger Notification Form as being their top customers. The Commission therefore attaches particular weight throughout its analysis to the views of these more significant customers.
- 1.42 Amárach completed a total of 182 interviews. 67% of respondents were from the hospitality sector and the remaining 33% of respondents were from the healthcare sector.
- 1.43 The Amárach Survey is attached to this Phase 2 Determination in Appendix 2.
- 1.44 The Commission sought economic advice from PMCA Economic Consulting with regards to aspects of market definition and the likely impact of the Proposed Transaction on any market for goods or services in the State.
- 1.45 Following receipt of the Parties’ written and oral submissions to its Assessment, the Commission sought specialist economic advice from DotEcon Ltd. (“DotEcon”). The DotEcon economic advice addressed specific arguments raised by the Parties.³⁷

Third Party Submissions

- 1.46 No third party submission was received by the Commission during the Phase 2 investigation.

³⁰ Phone call was held on 20 February 2019.

³¹ Phone call was held on 26 February 2019.

³² Phone call was held on 19 February 2019.

³³ Phone call was held on 19 February 2019.

³⁴ Phone call was held on 20 February 2019.

³⁵ [...].

³⁶ [...].

³⁷ For information purposes only, the DotEcon report (the “DotEcon Report”) is presented alongside this Phase 2 Determination in Appendix 3. The views expressed by DotEcon are not necessarily the views of the Commission.



2. INDUSTRY BACKGROUND – FLAT LINEN RENTAL AND MAINTENANCE

- 2.1 Both Berendsen and Kings Laundry supply outsourced flat linen rental and maintenance services. This section provides an industry overview and describes some of the recent trends in the rental and maintenance of flat linen in the State.

Industry Overview

- 2.2 The demand for outsourced flat linen rental and maintenance services³⁸ arises primarily in the hospitality and healthcare sectors. Customers in these sectors require a wide range of linen items including, but not limited to: bed linen; table linen; towels; and bath robes. The Parties indicated that, in addition to linen items, customers in the healthcare sector require rental and maintenance of surgical scrubs and maintenance of certain miscellaneous items.³⁹ Customers in both sectors typically specify item type, size, colour and provisional annual volume of required linen items. Certain hospitality customers (e.g., 5 star hotels) also specify linen quality (in terms of thread count or GSM⁴⁰) and may also need their logo embroidered on linen items. Finally, customers specify timing and frequency of flat linen pick-up and delivery as well as some key performance indicators such as the maximum acceptable level of rejected linen.⁴¹
- 2.3 The linen maintenance process is similar across both healthcare and hospitality sectors with the same techniques and equipment used to wash, dry and iron soiled linen returned from customers in both sectors.⁴² Thus, linen laundries catering for customers in both sectors tend to process linen in the same facility. However, linen items in the healthcare sector can get infected or contaminated with infectious diseases. For this reason, healthcare customers require linen laundries to adhere to certain linen processing guidelines.⁴³ In summary, linen laundries serving healthcare customers are required to:
- a) Deploy a barrier wall system in order to prevent cross-contamination;
 - b) Wash linen items at specified temperature for a specified period of time;
 - c) Inject staff involved in the process with hepatitis B injections;
 - d) Give protective clothing and gloves to laundries' staff dealing with linen items from healthcare customers;
 - e) Maintain a higher level of cleanliness at a linen laundry facility compared to a laundry facility that deals only with hospitality linen; and

³⁸ Hereinafter referred to as "flat linen rental and maintenance services".

³⁹ Such items include, for example, patient gowns and slings.

⁴⁰ In short, GSM refers to the fabric weight and density of towels in grams-per-square-meter. A towel with a higher GSM measurement is thicker and plusher than one with a low GSM, meaning it can absorb more water due to the higher pile and is usually made from a more luxurious type of cotton.

⁴¹ Customers may reject delivered linen because it is either (i) not clean or (ii) damaged (e.g., torn).

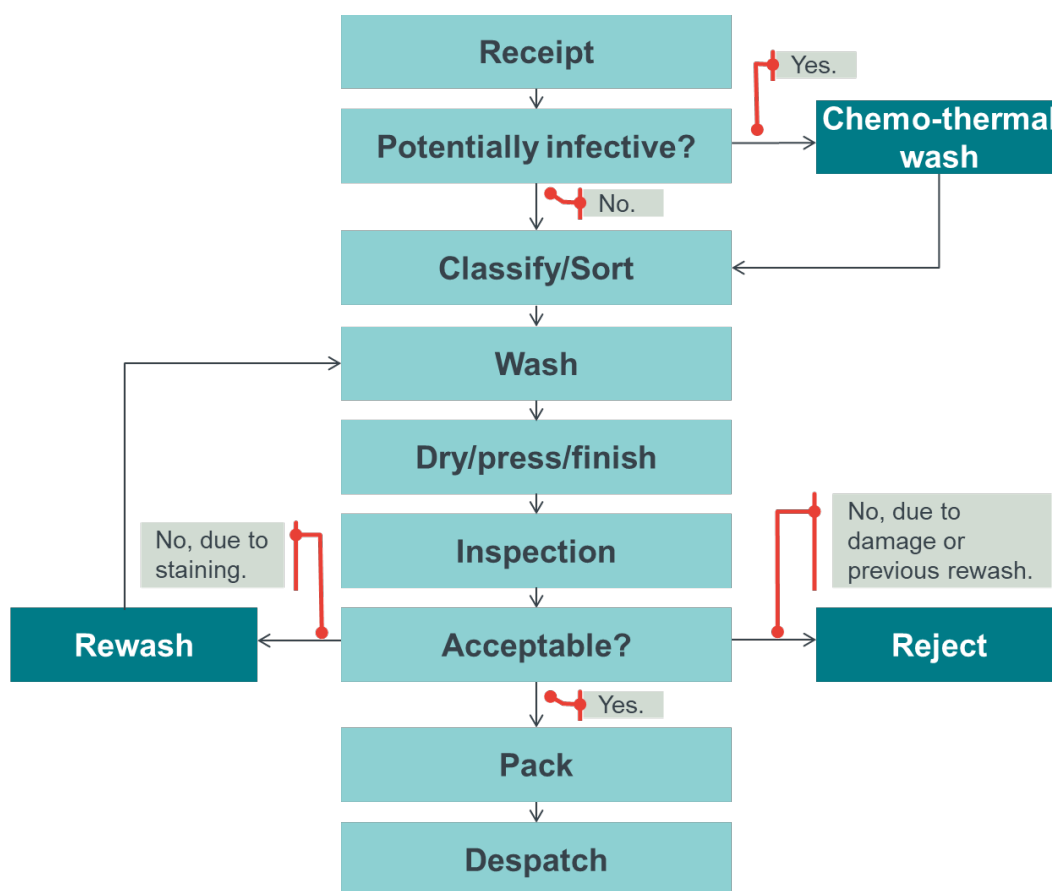
⁴² It should be noted that the equipment used will differ depending on the type of linen (e.g., whether it is bed or table linen).

⁴³ For example, see the HSE's guidelines for managing laundry and linen in healthcare facilities which can be accessed at: <https://www.hse.ie/eng/about/who/healthwellbeing/infectcont/sth/gl/ipcc-guidelines-section-9.pdf>.

- f) Maintain a higher level of cleanliness in trolleys and vehicles carrying linen items.

2.4 The Parties indicated that contaminated linen arrives in alginate bags and is put through an initial chemo-thermal wash to prevent the spread of microorganisms before joining all other soiled linen. Figure 1 illustrates the flat linen maintenance process for healthcare customers.

Figure 1: Flat linen maintenance process for healthcare customers



N.B. The dry/press/finish steps vary depending on the type of item being laundered.

Source: information provided by the Parties

2.5 Linen laundries typically operate one or more facilities with a fleet of heavy goods vehicles (“HGVs”) and vans delivering/collecting clean/soiled linen from multiple customer sites each day. In this supply model, linen laundries tend to earn higher margins if they are able to fill their vehicles by:

- selling multiple services to their customers (e.g., flat linen and dust mats rental and maintenance services);
- having a high density of customers in their areas of operation;
- having facilities in close proximity to their customers; and/or
- selling services to large customers.



- 2.6 In terms of pricing, the Commission's review of the Parties' contracts indicated that the Parties charge customers [...].⁴⁴ Prices are usually set out in contracts and are [...] during the duration of the contract. It should be noted that the largest customers of linen laundries frequently avail of [...].
- 2.7 Services provided by linen laundries can be grouped into three broad categories:
- a) maintenance only – where linen items are owned by the customer, but maintained by the linen laundry;
 - b) rental and maintenance – where linen items are provided (and, where necessary replaced) by and maintained by the linen laundry;
 - c) managed service – where the linen laundry not only rents and maintains linen, but also runs the customer's linen stock room and the distribution of linen throughout the customer's facilities such as a hospital or hotel.
- 2.8 Finally, a distinction can be made in terms of how linen laundries manage their linen stock:
- a) pooled linen system – where linen items are shared amongst customers (i.e., a customer may receive clean linen items previously used by another customer); and
 - b) dedicated linen system – where linen items are dedicated to a single customer (i.e., a customer receives the same linen items that were sent to the linen laundry for washing).

Nature of competition

- 2.9 The Parties submitted that customers in healthcare and hospitality sectors can select their providers of flat linen rental and maintenance services by: (i) approaching them directly and asking for a quote; or (ii) issuing a formal tender where providers are selected based on specific requirements.⁴⁵ Competition between linen laundries therefore takes place when a customer is considering its contract options.
- 2.10 The Parties submitted that customers in the hospitality sector use both approaches when selecting linen laundries, while the majority of healthcare customers use formal tender procedures. The Commission's market investigation broadly supported the Parties' views. For example, the Amárach Survey indicated that 23% of the respondents from the healthcare sector issue formal tenders with 19% requesting quotes with just over a third 35% saying that they extend, rollover or re-contract with their existing provider. In comparison, only 16% of respondents from the hospitality sector stated that they issue formal tenders whereas just over half, 51%, requested quotes and 17% said that they extended, rolled over or re-contracted with their existing provider.⁴⁶ A

⁴⁴ This was also confirmed by Customers interviewed directly by the Commission. See paragraph 10.11 below.

⁴⁵ See page 14 of the Merger Notification Form.

⁴⁶ See slide 32 of the Amárach Survey.



similar pattern was observed during the Commission's interviews with significant Customers carried out in its direct Market Enquiries.⁴⁷

- 2.11 The Commission notes that direct negotiations between laundries and customers include the roll-over of existing agreements. Therefore, the degree to which there is competition for customers using a direct negotiation approach will depend on the extent to which such customers proactively seek out bidders and invite them to make an offer, or potential providers proactively contact potential customers (i.e., make cold calls).
- 2.12 The Commission notes that procurement for some (but not all) public hospitals is currently carried out by the HSE. The OGP is developing a Framework Agreement for outsourced flat linen rental and maintenance services to be supplied to public bodies (the "OGP's Framework").⁴⁸ On 3 June 2019, the OGP issued a Request for Tender ("RFT") for the establishment of the OGP's Framework.⁴⁹ The duration of the OGP's Framework will be 2 years with a possibility of 2 one-year extensions. The OGP's Framework is divided into 6 lots⁵⁰ and is expected to be operational in Q3 2019.⁵¹ In common with other procurement frameworks, the OGP's RFT invites bidders to tender for admission to the OGP's Framework, with tenderers required to meet a set of qualification criteria such as experience and financial and economic standing. Subsequent mini-tenders will be held for specific contracts and only suppliers admitted to the OGP's Framework will be able to compete for these contracts. Admission to the framework does not guarantee any contract award. Although there is no mandatory requirement for public bodies to use the OGP's Framework, its establishment would, to a large extent, replace the HSE's tender practices.

Increasing demand for outsourced flat linen rental and maintenance services

- 2.13 The Commission notes that generally the demand for outsourced flat linen rental and maintenance services has been continuously growing in recent years. This is demonstrated in Figure 2 which indicates that combined revenue for outsourced flat linen rental and maintenance services increased from €[...] in 2014 to €[...] in 2017 (an increase of 20%) with a Compound Annual Growth Rate of 6.2% during this period.

⁴⁷ See paragraph 10.14 below.

⁴⁸ The Framework Contract will be available for use by all public sector bodies seeking to purchase linen and laundry services.

⁴⁹ See https://irl.eu-supply.com/app/rfq/publicpurchase_frameset.asp?PID=148064&B=ETENDERS_SIMPLE&PS=1&PP=.

⁵⁰ Four of these lots cover the provision of outsourced flat linen rental and maintenance services.

⁵¹ See a note of phone call with the OGP dated 14 May 2019

Figure 2: Revenue from the provision of flat linen rental and maintenance services, 2014 – 2017
[REDACTED]

Source: The Commission's analysis using information provided by the Parties and the Competitors.

- 2.14 The majority of this growth is accounted for by the increased demand from customers in the hospitality sector due to growing level of domestic⁵² and overseas tourism⁵³ in recent years. For example, a recent survey of members of Irish Hotels Federation⁵⁴ (the "IHF survey") indicates that 70% of survey respondents reported business growth when comparing the summer of 2018 with the summer of 2017. An increase in summer advance bookings was also reported by the majority of respondents (67%).
- 2.15 Demand for flat linen rental and maintenance services from customers in the healthcare sector is also growing (albeit modestly) with internal Berendsen's documents noting [...].⁵⁵
- 2.16 In general, the Commission has observed that demand for flat linen rental and maintenance services tends to grow in line with Gross Domestic Product ("GDP"). For example, Berendsen told the Commission that [...].⁵⁶ In addition, Berendsen confirmed that the flat linen rental and maintenance sector is growing in line with growing tourism and the economy.⁵⁷ Kings Laundry told the Commission that its turnover grew during the recession as it acquired customers from competitors [...].⁵⁸

⁵² For example, the IHF survey indicates that 60% of surveyed hotels and guesthouses reported an increase in domestic visitor numbers. See also Fáilte Ireland's Tourism Barometer – December 2018 which can be accessed at: <http://www.failteireland.ie/Research-and-Insights.aspx>.

⁵³ For example, the Central Statistics Office (the "CSO") reports that overseas trips in Q2 2018 increased by 6.6% when compared with the same period in 2017. Growth in the hospitality sector is also highlighted in Irish Times Article which can be accessed at: <https://www.irishtimes.com/business/commercial-property/ireland-reaches-820-hotels-in-bumper-year-for-sector-1.3316496>

⁵⁴ The report can be accessed at: https://www.ihf.ie/sites/default/files/upload/june_barometer.pdf.

⁵⁵ For example, see slide 4 of Berendsen's document titled [...] submitted by Berendsen in response to Question 9 of the First RFI. Also see the HSE's page 69 of the [National Service Plan 2019](#) in which it is noted that acute bed capacity will increase by 277 beds by Q1, 2020 (2%).

⁵⁶ The Commission's meeting with Berendsen on 30 January 2019.

⁵⁷ The Commission's meeting with Berendsen on 30 January 2019.

⁵⁸ The Commission's meeting with Kings Laundry on 2 February 2019.



3. RELEVANT PRODUCT AND GEOGRAPHIC MARKETS

Horizontal Overlap

- 3.1 There is a horizontal overlap between Berendsen and Kings Laundry in the State with respect to the supply of outsourced flat linen rental and maintenance services to customers in: (i) the healthcare sector; and (ii) the hospitality sector.

Relevant Product and Geographic Markets

Views of the Parties

Relevant product markets

- 3.2 The Parties took the view that the supply of flat linen rental and maintenance services⁵⁹ to: (i) healthcare; and (ii) hospitality sectors form distinct product markets. In this regard, the Parties noted that: *“The customer bases of the two segments are clearly distinct, and the nature of the products purchased by and the requirements of customers in each of the two segments are very different.”*⁶⁰ At the same time, the Parties noted that *“...from a supply-side perspective, there are limited technical barriers to a business active in one of these segments beginning to supply customers in another.”*⁶¹
- 3.3 The Parties also highlighted material differences in conditions of competition between the healthcare and hospitality segments⁶² and were of the view that the approach taken by the UK’s Office of Fair Trading (“OFT”) in Johnson Apparelmaster Ltd / Cannon Textile Care Business⁶³ should be adopted.
- 3.4 The Parties proposed that the supply of flat linen rental and maintenance services to healthcare customers constitutes a single product market, but highlighted that within this market there is a wide range of different types of customers.⁶⁴ The Parties then noted that *“The level of overlap between the Parties in servicing these customer groups differs”*⁶⁵, as Kings Laundry does not provide flat linen rental and maintenance services to public healthcare customers. While the Parties were of the view that this fact was not adequately taken into account by the Commission, they confirmed their position that the supply of flat linen rental and maintenance services to healthcare customers constitutes a single product market.⁶⁶

⁵⁹ The Commission notes that the Parties were of the view that rental and maintenance of surgical scrubs and maintenance of certain miscellaneous items should be included in the relevant market for the provision of flat linen rental and maintenance services to the healthcare sector. The Parties noted that surgical scrubs and other ancillary items typically form part of a broader package of contracted services that includes flat linen. Footnote 30 of the Merger Notification Form.

⁶⁰ Page 17 of the Merger Notification Form.

⁶¹ Page 17 of the Merger Notification Form.

⁶² Page 18 of the Merger Notification Form.

⁶³ See OFT’s decision of 29 March 2012 titled [“Anticipated acquisition by Johnsons Apparelmaster Limited of the Cannon Textile Care Business”](#), case number ME/5325/12 (“Johnsons Apparelmaster/Cannon”).

⁶⁴ Frontier Economics Report, paragraph 2.6.

⁶⁵ Frontier Economics Report, paragraph 2.7.

⁶⁶ Frontier Economics Report, paragraph 2.8.



- 3.5 Additionally, the Parties were of the view that self-supply of flat linen and its maintenance via OPLs should be included in the relevant product markets.⁶⁷ In this regard, the Parties proposed that the OFT's reasoning in excluding self-supply in *Johnsons Apparelmaster/Cannon* does not apply in this case because:
- a) there was a range of hospitals and hotels operating their own OPLs;
 - b) there was evidence of customers switching from purchasing outsourced flat linen rental and maintenance services to self-supply;
 - c) there were a large number of suppliers of industrial/commercial laundry equipment in the State, thus demonstrating a demand for such equipment from both healthcare and hospitality customers;
 - d) customers used the threat of switching to OPL in order to achieve better prices and better customer service;
 - e) the costs associated with setting up OPL facilities were relatively low and would account for a small share of a customers' revenue;
 - f) some customers already had OPL facilities that are used for maintenance of certain items (e.g., towels). For such customers, the costs of maintenance for more items in-house would be lower than for a customer without an OPL facility; and
 - g) OPLs were useful for hotels that have seasonal demand as it allowed them to retain key staff throughout the year.
- 3.6 The Parties in their Report on OPLs reiterated some of the arguments presented in the Merger Notification Form, but also set out additional arguments:
- a) there was a precedent of national competition authorities ("NCAs") assessing OPL either as part their assessment of market definition or as part of their assessment of customers' countervailing buyer power ("CBP");⁶⁸
 - b) OPLs were referred to as one of the main competitors in Elis' financial statements;⁶⁹ and
 - c) additional reasons why the OFT's reasoning in excluding self-supply in *Johnsons Apparelmaster/Cannon* did not apply in this case.
- 3.7 In their written Response, the Parties were of the view that the Commission: (i) underestimated the level of switching to OPLs; and (ii) failed to apply the hypothetical monopolist tests correctly.⁷⁰ In this regard, the Parties noted that OPLs posed a substantially higher constraint on Kings Laundry than Berendsen during the analysed

⁶⁷ Pages 18 and 19 of the Merger Notification Form.

⁶⁸ In addition to *Johnsons Apparelmaster/Cannon*, the Parties referred to case CA/1135/92 – *Spring Grove / Conkenner* and case ME/3633/08 – *Fishers Services Ltd / The Sunlight Service Group*.

⁶⁹ These statements are available at: <https://www.corporate-elis.com/en/investor-relations>.

⁷⁰ Frontier Economics Report, paragraphs 2.2 and 2.10.



period.⁷¹ The Parties claimed that the evidence and analysis does not support the exclusion of OPLs from the relevant market. The Parties noted that, for hospitality customers, switching from Kings Laundry to OPL is more prevalent than switching from Kings Laundry to Berendsen. The Parties believed that there are errors in the application of the hypothetical monopolist (SSNIP) test, and in the use of survey data.⁷²

- 3.8 The Parties also stated that customers could opt to use launderettes providing a wash-only service.⁷³

Relevant geographic markets

- 3.9 In relation to the geographic scope of the relevant market(s), the Parties considered that it should be at least State-wide, referring to European Commission's (the "EC's") decision in *Case No M.8399 - CWS-BOCO / RENTOKIL INITIAL TARGET BUSINESSES*.⁷⁴ In this regard, the Parties noted that: *"Whilst the nature of the products means that the costs of serving a customer are likely to be higher the farther they are from the plant, the relatively small size of the State, especially relative to other EU Member States, such as the United Kingdom, means that the costs of transporting linen even over a substantial distance are not prohibitive."*⁷⁵

- 3.10 Furthermore, the Parties noted that:⁷⁶

- a) their competitors are generally active across the State;
- b) suppliers that originally operated at a local or regional level have expanded activities into other regions;
- c) the map of customers submitted by the Parties indicates that some of the Parties' customers are located at substantial distances from the nearest Parties' facilities catering for flat linen; and
- d) there is a prevalence in national tenders by hotel groups to award contracts to suppliers of flat linen rental and maintenance services on a national basis.

- 3.11 In this regard, the Parties argued that in its Assessment, the Commission understated the role of regional providers⁷⁷ noting that *"...laundries can have a national presence irrespective of the number of sites they have."*⁷⁸

- 3.12 Finally, while not explicitly stating that the geographic market should be broadened to include Northern Ireland, the Parties noted that linen laundries operating in Northern Ireland such as Lilliput and Limavady Linen, serve customers in the State from their facilities in Northern Ireland and are competing with the Parties. Thus, the Parties

⁷¹ Frontier Economics Report, paragraph 2.10.a.

⁷² Frontier Economics Report, paragraphs 2.9 to 2.11.

⁷³ Page 19 of the Merger Notification Form.

⁷⁴ See the EC's decision in [Case No M.8399 - CWS-BOCO / RENTOKIL INITIAL TARGET BUSINESSES](#) ("CWS-boco/Rentokil").

⁷⁵ Page 19 of the Merger Notification Form.

⁷⁶ Page 19-20 of the Merger Notification Form.

⁷⁷ Frontier Economics Report, paragraphs 2.14 to 2.17.

⁷⁸ Frontier Economics Report, paragraph 2.16.



considered that constraint from these competitors should be taken into account in the Commission's competitive assessment.⁷⁹

Views of third parties

- 3.13 The Competitors' and Customers' views largely confirmed the differences between the requirements of customers in the healthcare and hospitality sectors in terms of: (i) the type of linen items; and (ii) hygiene standard specification. For example, [...] stated that:

"Hospitality customers have no hygiene requirements. Some private healthcare customers require a hygiene certification such as BS EN 14065, some have no hygiene certification requirements. Large public healthcare customers require hygiene certification such as BS EN 14065."^{80 81}

- 3.14 Customers from the healthcare sector confirmed that a linen laundry's ability to demonstrate that it has processes in place to prevent cross-contamination from soiled linen is an essential requirement. In this regard, the Amárach Survey indicated that 80% of respondents considered that a linen laundry's ability to adhere to procedures required by an organisation (e.g., bio contamination control or RABC) is an essential or very important factor when choosing suppliers of outsourced flat linen rental and maintenance services.⁸²

- 3.15 The Competitors were of the view that it is relatively straightforward to switch the supply of outsourced flat linen rental and maintenance services between the two sectors. All six of the Competitors that provided views on this issue noted limited barriers to switching the supply of outsourced flat linen rental and maintenance services from the hospitality sector to the healthcare sector and *vice versa*. The main barriers cited to supply-side substitution were associated with the switch of supply from hospitality to healthcare customers:

- a) deployment of a barrier wall system in order to prevent cross-contamination;
- b) physical changeover of flat linen stock;
- c) more administrative work in the healthcare sector associated with the preparation of bids in response to ITTs; and
- d) adhering to higher hygiene standards when providing flat linen rental and maintenance services to customers in the healthcare sector.

- 3.16 In general, the Competitors opined that none of these financial barriers would prevent a swift and cost-effective switch of supply from one sector to another. This is particularly the case for a provider switching supply from the healthcare sector to the hospitality sector, because in that case a provider of outsourced flat linen rental and maintenance services would only be required to change linen stock. In contrast, switching supply from the hospitality sector to the healthcare sector would require not only a changeover of

⁷⁹ Pages 20 to 21 of the Merger Notification Form.

⁸⁰ [...] reply to question 20 of the First Competitor Questionnaire.

⁸¹ Note that BS EN 14065 is the internationally-recognised standard for certifying biocontamination control systems for the laundry processing of textiles.

⁸² Slide 36 of the Amárach Survey.



flat linen stock, but also additional investment in terms of deployment of a barrier wall system, administration and obtaining and adhering to higher hygiene standards.

- 3.17 In relation to OPLs, Customers that responded to the Questionnaire to Customers unanimously considered that setting up OPLs would not be a viable option in response to a 5% to 10% price increase⁸³ by their supplier of outsourced flat linen rental and maintenance services.⁸⁴ The main reasons provided can be summarised as follows:
- a) customer sites were unsuitable to host OPL facilities due to a lack of space required for such a facility;
 - b) substantial costs associated with switching to self-supply including (but not limited to): purchasing linen stock, equipment required for maintaining linen, OPL staff and other operational costs (e.g., electricity); and
 - c) lack of expertise in operating a laundry.
- 3.18 Even Customers that currently do some of their laundry in-house (e.g., some hotel groups) noted that their OPLs do not have the capacity to accommodate all of their flat linen maintenance requirements. For example, [...] noted that the costs of setting up OPL facilities (in addition to OPLs currently servicing two of its hotels) in order to cater for the whole group's needs would significantly exceed the hypothetical 5%-10% increase in annual expenditure on outsourced flat linen rental and maintenance services.⁸⁵
- 3.19 The Commission received mixed evidence from Competitors on the issue of OPLs. Five out of the eight Competitors that provided views on this issue indicated that switching to OPLs would not be a viable alternative for their customers purchasing outsourced flat linen rental and maintenance services. These competitors cited costs associated with setting up an OPL and lack of available staff as the main reasons for their views. [...] noted that in its experience, the opposite has occurred (i.e., customers switch from OPLs to outsourced flat linen rental and maintenance services).⁸⁶ Three out of eight Competitors that considered a switch to OPLs to be a viable option cited examples of hospitality customers switching to OPLs.
- 3.20 Suppliers of laundry equipment were of the view that setting up an OPL is a viable option for customers in both healthcare (in particular for nursing homes) and the hospitality sectors. Suppliers of laundry equipment stated that they have observed an increased demand for laundry equipment from self-supplying organisations in both sectors. These views were expressed in respect of organisations setting up OPLs in existing facilities (e.g., [...]), as well as organisations setting up OPLs in newly built facilities.
- 3.21 One supplier of laundry equipment⁸⁷ noted that organisations can switch to OPL as long as they have sufficient space. Thus, hotels in certain urban areas (e.g., Dublin city

⁸³ This is a typical price range used in the small but significant non-transitory increase in price ("SSNIP") test. The SSNIP test seeks to identify the smallest market within which a hypothetical monopolist could profitably impose a SSNIP without a sufficient number of consumers/service purchasers switching to alternative products to render the price increase non-profitable.

⁸⁴ See paragraph 10.27 below.

⁸⁵ [...] response to question 11 of the Questionnaire to Customers.

⁸⁶ [...] response to question 19 of the First Competitor Questionnaire.

⁸⁷ Phone call record with [...].



centre) may have space constraints that would prevent them from switching. In addition, the same supplier noted that setting up an OPL tends to be cyclical and depends on the following: the relevant finance personnel; the housekeeper; the availability of staff for the OPL; poor outsourced service quality (e.g., the number of linen items rejected due to being dirty); and the management of the hotel.

- 3.22 Furthermore, this supplier of laundry equipment noted that while some hotels and hospitals do the laundry of some of the linen items in-house, they also outsource their flat linen rental and maintenance services requirements in respect of other items. For instance, it was noted that while [...] has an OPL, it also outsources rental and maintenance of surgical scrubs. In addition, certain hotels have an OPL in respect of towels, but outsource linen and maintenance services in respect of other products (e.g., bed linen).
- 3.23 In relation to wash-only launderettes, the majority of Customers that responded to the Questionnaire to Customers indicated that they would not consider using a wash-only launderette in response to a 5%-10% price increase of flat linen rental and maintenance services.⁸⁸ [...] noted that while using wash-only launderettes is a potential option, there would be concerns whether wash-only launderettes would be able to ensure daily delivery of linen.⁸⁹ [...] noted that purchasing all necessary linen items (instead of renting them) would also require a substantial capital investment.⁹⁰
- 3.24 Finally, the Commission notes Competitors' views on the likely scope of the geographic market. The Competitors considered that linen laundries based in Northern Ireland do not tend to have significant activities in the State. In this regard, [...] stated that it expects to expand its activities in the State due to the fact that some of its customers in Northern Ireland are building additional sites in the State and want [...] to provide services to their new sites in the State.⁹¹ Similarly, linen laundries based in the State are expanding their activities in Northern Ireland.

Views of the Commission

Previous determinations

- 3.25 In its merger determination *M/05/045 – HTS International / National Linen*⁹², the Commission's predecessor the Competition Authority (the "Authority") made a distinction between different types of activities in which undertakings involved in the relevant transaction were engaged and identified flat linen rental and maintenance services as a distinct category of services. There was no definitive view on the precise definition of the relevant product and geographic markets in that case.
- 3.26 In its decision *CA/1135/92 – Spring Grove / Conkenner* (the "1993 Decision"), the Authority examined arrangements for the purchase of the entire issued capital of

⁸⁸ See paragraph 10.28 below.

⁸⁹ [...] response to question 12 of the Questionnaire to Customers.

⁹⁰ [...] response to question 12 of the Questionnaire to Customers.

⁹¹ The Commission's telephone call with [...] dated 20 February 2019.

⁹² The determination in this case can be accessed at: <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m05045-hts-international-national-linen/>.



Conkenner Limited by Spring Grove Ireland Limited from Initial Services (International) Limited pursuant to Section 4 of the Competition Act 1991.

- 3.27 The Authority defined a broad market for the provision of textile rental and associated services, but assessed the likely competitive impact of the relevant transaction by reference to four distinct service categories⁹³ provided on a national basis.⁹⁴ It should also be noted that, in that case, the Authority decided that “... *in-house provision is a sufficiently close substitute for bought-in services for it to be considered part of the same market*”.⁹⁵
- 3.28 The previous determinations set out above are of very limited value in terms of addressing the relevant product market in this case, in particular given how long ago they were decided, and given market developments since then.

Relevant product markets

- 3.29 Having regard to the available evidence and product market definitions adopted in other jurisdictions, the Commission identified 4 questions relevant to the identification of the product market definition in this case:
- a) does the supply of flat linen rental and maintenance services to: (i) healthcare; and (ii) hospitality customers form distinct product markets? (discussed in paragraphs 3.32 to 3.443.43 below);
 - b) is self-supply of flat linen and its maintenance services via OPLs in the same product market as the supply of outsourced flat linen rental and maintenance services? (discussed in paragraphs 3.45 to 3.78 below);
 - c) does the supply of different categories of flat linen service constitute distinct product markets? (discussed in paragraphs 3.79 to 3.85 below); and
 - d) does the supply of rental and maintenance of workwear constitute a distinct product market from the rental and maintenance of flat linen? (discussed in paragraphs 3.86 to 3.92 below).
- 3.30 The Commission notes that the Parties agreed that (i) there are separate relevant markets for healthcare and hospitality; (ii) that the supply of flat linen maintenance-only services is not included in the healthcare or the hospitality market; and that (iii) the provision of workwear rental and maintenance services (with the exception of scrub suits and other miscellaneous items provided by linen laundries to healthcare customers) is not included in the healthcare and hospitality markets. As these aspects of the relevant product markets are not disputed, the Commission provides a summary outline of its consideration below.
- 3.31 The Parties did not agree that self-supply should be excluded from the relevant markets.

⁹³ These were: Hand Drying Facilities, Workwear Rental, Dustmat Rental and Linen Services. See paragraph 6 of the 1993 Decision.

⁹⁴ While the Authority did not come to a definitive view on the precise definition of geographic markets, market share estimates were made on the basis of companies' State-wide turnover. *Ibid*, paragraph 6.

⁹⁵ Paragraph 32 of the 1993 Decision.



Does the supply of outsourced flat linen rental and maintenance services to: (i) healthcare; and (ii) hospitality customers form distinct product markets?

Demand for linen items

- 3.32 The Commission's view is that differences in product characteristics between the type of outsourced flat linen required by healthcare and hospitality customers indicates that they are not close substitutes.
- 3.33 From a demand-side perspective, the examination of the Parties' contracts with their customers as well as ITTs issued by customers indicated that, in general, organisations in the hospitality sector require different linen items when compared to organisations in the healthcare sector. For example, while organisations in both sectors need bed linen, rented linen items differ in terms of their composition and size.⁹⁶ Information provided by Berendsen indicates that a significant share of rented linen items by its customers in the hospitality sector is accounted for by double and king size bed linen items ([...]).⁹⁷ These items are not required by Berendsen's healthcare customers. Similarly, bed blankets account for [...] of all rented items by Berendsen healthcare customers. These items are not required by Berendsen's hospitality customers.

Differences in processing

- 3.34 The Commission's view is that the specific requirements of healthcare customers for processing means that a significant number of customers would not find processing associated with the supply of linen to hospitality customers to be a good substitute for the processing associated with the supply of linen to healthcare customers.
- 3.35 There are certain differences between customers' requirements for linen processing. In particular, ITTs issued by healthcare customers (e.g., hospitals) require adherence to certain hygiene standards that specify the level of quality required for processing of flat linen in terms of bio-contamination control.⁹⁸
- 3.36 Hygiene standard specification is not uniform across customers in the healthcare sector, with nursing/care homes generally not requiring linen laundries' adherence to specific hygiene standards.⁹⁹ It should also be noted that not all hospitals require linen laundries to have hygiene standard accreditations.¹⁰⁰ However, according to Kings Laundry, such accreditations *"...does improve a tender submission particularly in the healthcare sector"*.¹⁰¹

⁹⁶ For example, as noted in paragraph 2.2 above, certain hotels specify the quality of linen to be supplied by linen laundries. More generally, customers in the hospitality sector require bed sheets for larger beds.

⁹⁷ Berendsen's response to Question 8 of the Second RFI. Similar information was provided by Kings Laundry. See Kings Laundry's response to Question 7 of the Second RFI.

⁹⁸ The Commission understands that there are two commonly cited standards: (i) NHS Executive HSG(95)18, *"Hospital laundry arrangements for used and infected linen"*, dated 21 April 1995; and (ii) and BS EN 14065:2002, *"Textiles – Laundry Processed Textiles – Biocontamination Control System"*, dated 6 December 2002 (known in the industry as the risk analysis bio-contamination control ("RABC") standard). In 2016 this standard was superseded by BS EN 14065:2016.

⁹⁹ The Commission also notes the Parties' argument that wash-only laundrettes can provide services to both hospitality customers and nursing/care homes which indicates that the Parties' consider flat linen maintenance requirements to be similar for these categories of customers.

¹⁰⁰ For example, while Kings Laundry [...], it has not obtained formal accreditation to date.

¹⁰¹ Kings Laundry's response to Question 21 of the First RFI.



- 3.37 The Commission notes that, unlike in the healthcare sector, customers in the hospitality sector do not specify hygiene standards to be used by linen laundries when processing flat linen. However, linen laundries can apply a healthcare linen maintenance process when maintaining flat linen used by hospitality customers. In fact, Kings Laundry indicated that it uses [...] at its facilities.¹⁰²
- 3.38 The Commission observed some degree of demand-side substitutability between the two sectors. In general, customer contracts and ITTs do not specify what linen management system must be used¹⁰³ with linen laundries frequently using a pooling system. In this regard, Berendsen noted that [...].¹⁰⁴ Berendsen stated that [...].¹⁰⁵ Kings Laundry also indicated that operation of a pooling system for flat linen that is used in both sectors would be possible, if the linen laundry is adhering to the linen processing standard requested by healthcare customers.

Differences in competitive conditions

- 3.39 The Commission notes the Parties' views in relation to different levels of competition in the healthcare and hospitality sectors. Currently, there are five linen laundries providing outsourced flat linen rental and maintenance services to both healthcare and hospitality sectors in the State.¹⁰⁶ There is no linen laundry focusing on the provision of outsourced flat linen rental and maintenance services to the healthcare sector only. In comparison, in addition to linen laundries operating in both sectors, there are six linen laundries currently focusing on the hospitality sector only in the State.¹⁰⁷
- 3.40 Hence, the number of competitors providing flat linen rental and maintenance services to customers in the hospitality sector is significantly higher than the number of competitors servicing customers in the healthcare sector. For example, presence measured by market shares demonstrates that linen laundries such as [...], while being somewhat successful in the hospitality sector have not yet been able to penetrate the healthcare sector to any material extent.¹⁰⁸ The differing competitive landscapes in the healthcare and hospitality sectors thus point to distinct product markets.

Precedent

- 3.41 The Commission notes the OFT's reasoning in *Johnsons Apparelmaster/Cannon*. The activities of both parties in this transaction included the provision of flat linen rental and maintenance services. In assessing the segmentation of the product market by textile type,¹⁰⁹ the OFT stated that there was "*mixed evidence*" on the degree of supply-

¹⁰² Kings Laundry's response to Question 21 of the First RFI.

¹⁰³ As noted in paragraph 2.2 above, certain hotels require their logo embroidered on linen items, thus making such items unusable by other customers of linen laundry.

¹⁰⁴ Berendsen's response to the Commission's queries dated 30 November 2018.

¹⁰⁵ Berendsen's response to the Commission's queries dated 30 November 2018.

¹⁰⁶ These are: Berendsen, Kings Laundry, [...]. Kings Laundry currently services private hospitals and nursing/care homes while [...] play a very minor role in the healthcare sector. In addition, CWS-boco provides scrub suit rental and maintenance services.

¹⁰⁷ These are: [...] provides services to healthcare customers in [...].

¹⁰⁸ See the Commission's market share analysis in paragraphs 4.56 to 4.76 and 4.212 to 4.222 below.

¹⁰⁹ The OFT identified four product categories: workwear garments, healthcare, hospitality and washroom services.



side substitutability available to it¹¹⁰ and examined the relevant transaction with reference to each type of textile on a “cautious basis”.¹¹¹

- 3.42 The Commission’s view is consistent with precedent in other jurisdictions. For example, very recently, the UK’s Competition and Markets Authority (“CMA”) in the case *Vanilla Group / Washstation*¹¹² considered that: (i) specific requirements for laundry services from higher education customers; and (ii) required experience in the supply of services to higher education customers collectively represented a barrier for providers of laundry services when switching capacity from other customer segments.¹¹³ The Commission considers that a similar barrier is faced by linen laundries that currently supply outsourced flat linen rental and maintenance services to customers in only the hospitality sector.

Conclusion on distinct product markets for healthcare and hospitality customers

- 3.43 The Commission notes that Kings Laundry has not provided outsourced flat linen rental and maintenance services to public healthcare customers to date. Thus, within the healthcare sector, currently the Parties activities overlap only with respect to private hospitals and nursing homes. However, while the Commission takes account of variations in how the Parties address different customer segments, it maintains that the supply of outsourced flat linen rental and maintenance services to healthcare customers constitutes a single product market, and notes that the Parties agree with this.
- 3.44 For the reasons set out in paragraphs 3.32 to 3.42, the Commission considers that the supply of outsourced flat linen rental and maintenance services to: (i) healthcare customers; and (ii) hospitality customers form two distinct product markets. In coming to this conclusion, the Commission has considered differences in the nature of demand from healthcare and hospitality customers, and differences in the conditions of supply.

Is the self-supply of flat linen and its maintenance services via OPLs in the same product market as the supply of outsourced flat linen rental and maintenance services?

- 3.45 The Commission’s investigation does not support the inclusion of the self-supply of outsourced flat linen rental and maintenance services via OPLs in the relevant product markets. Rather, the Commission is of the view that it is more appropriate to consider self-supply in the analysis of competitive effects when examining CBP.
- 3.46 Having found that there are separate relevant healthcare and hospitality markets, the Commission’s analysis continues by assessing each market in turn.

Healthcare market

- 3.47 The Commission notes that some healthcare customers currently self-supply flat linen through the use of OPL and that this is the case across different customer types within the healthcare market (i.e., it is true for some hospitals and some nursing homes). However, in order to be considered part of the relevant market, the Commission would

¹¹⁰ Johnsons Apparelmaster/Cannon, paragraph 30.

¹¹¹ *Ibid*, paragraph 30.

¹¹² See <https://www.gov.uk/cma-cases/vanilla-group-washstation-merger-inquiry>.

¹¹³ See paragraph 6.34 of the CMA’s report titled “JLA and Washstation A report on the completed acquisition by JLA New Equityco Limited of Washstation Limited” dated 11 October 2018.



expect to see evidence that healthcare customers operating OPLs are competing with linen laundries that provide outsourced flat linen rental and maintenance services by, for example, participating in tenders issued by purchasers of outsourced flat linen rental and maintenance services. This is not the case.

- 3.48 For completeness, the Commission has considered the degree of switching between healthcare customers who purchase outsourced flat linen rental and maintenance services, and customers who self-supply.

Propensity to switch

- 3.49 The Commission notes that none of the Customers in the healthcare sector contacted directly by the Commission through the Customer Questionnaires considered switching to self-supply to be a viable option in response to a 5% to 10% price increase by their supplier of outsourced flat linen rental and maintenance services.¹¹⁴
- 3.50 The Amárach Survey indicated that none of the respondents from the healthcare sector would consider switching to self-supply in response to a 5%-10% price increase imposed by their current provider of outsourced flat linen rental and maintenance services.¹¹⁵ A subset of respondents who indicated that they would switch to another provider were then asked to identify their most likely action in response to a hypothetical 5% to 10% price increase by all suppliers of outsourced flat linen rental and maintenance services. Just one respondent from the healthcare sector considered switching to self-supply in response to this market-wide price increase.¹¹⁶
- 3.51 The Commission notes the Parties' argument that the Commission's Assessment failed to compare the actual level of customer switching in response to a hypothetical 5% to 10% price increase presented in the Amárach Survey to a critical level of switching that would render such price increase by a hypothetical monopolist unprofitable. The Commission's approach to the hypothetical monopolist test took into account the fact that there is a significant variation between customers in both healthcare and hospitality sectors in terms of their size and their spend on outsourced flat linen rental and maintenance services. In circumstances where there is a significant variation between customer size, the Commission considers that the relevant question to consider is what is the level of actual sales loss rather than what is the number of lost customers.¹¹⁷ Thus, the Commission's Assessment attached more weight to responses of the largest Customers identified by the Parties as being significant, and interviewed directly by the Commission.¹¹⁸ As noted in paragraph 10.27 below, those Customers unanimously considered that switching to an OPL would not be a viable option in

¹¹⁴ See paragraph 3.17 above.

¹¹⁵ See slide 51 of the Amárach Survey.

¹¹⁶ See slide 55 of the Amárach Survey.

¹¹⁷ In this regard, in paragraph 4.16 of the document titled "[Good practice in the design and presentation of customer survey evidence in merger cases](#)", dated May 2018, the CMA reference number CMA78 (the "CMA's Survey Guidelines") the CMA notes that "*In most merger situations, the unit that we are conceptually most interested in is the value of sales in monetary terms. The diversion ratio therefore becomes the value of sales that are diverted to the merger Party over the total value of lost sales*". The Commission notes that in circumstances where all customers have similar level of expenditure on services in question, these two metrics would provide similar results.

¹¹⁸ The significance of these Customers to the Parties (in terms of turnover) is highlighted in paragraph 1.15 above.



response to a 5% - 10% price increase of outsourced flat linen rental and maintenance services.

- 3.52 As noted in paragraph 1.41 above, the purpose of the Amárach Survey is to inform the Commission's investigation and to supplement the Market Enquiries undertaken directly by the Commission. As part of the Amárach Survey, the respondents were asked to identify their most likely action in response to a hypothetical 5% to 10% price increase¹¹⁹ by only their supplier of outsourced flat linen rental and maintenance services.¹²⁰ The respondents that indicated that they would switch to another provider were then asked to identify their most likely action in response to a hypothetical 5% to 10% price increase by all suppliers of outsourced flat linen rental and maintenance services.¹²¹
- 3.53 The Commission has reviewed its approach to survey design, and in particular to the design of questions testing reaction to a SSNIP. The Commission considers that in the case where a respondent stated that it would do nothing if its supplier alone were to increase its price (i.e., when they have an option to choose other suppliers that do not increase prices), it is entirely appropriate to assume that this respondent would do nothing if every supplier increased prices. In this case, the customer would not have the option to choose an alternative supplier that did not increase prices. Thus, the Commission considered it appropriate to confine the question about what a respondent would do in response to a market-wide price increase to those respondents who stated that they would switch to another provider in response to their own supplier's price increase.

Review of Parties' evidence

- 3.54 Information received from the Parties and Competitors indicates that customers mainly switch to an alternative provider of flat linen rental and maintenance services rather than set up OPLs. In this regard, the Commission notes that the Parties were able to cite only one example of an organisation in the healthcare sector switching to OPL.¹²² On the other hand, the Commission's investigation revealed a number of examples where healthcare organisations shut down their OPLs and started to purchase outsourced flat linen rental and maintenance services. These include four hospitals [...].¹²³ Furthermore, information provided by Berendsen indicates that in 2018 [...] nursing homes with OPLs started to purchase outsourced flat linen rental and maintenance services from Berendsen.¹²⁴
- 3.55 Elis' financial statements further support the exclusion of self-supply from the relevant product market. See, for example, Figure 3, an extract of page 43 of Elis' 2017 annual report, which highlights that once the services have been outsourced they are very

¹¹⁹ See footnote 83 above.

¹²⁰ Slides 51 to 54 of the Amárach Survey.

¹²¹ Slides 55 of the Amárach Survey.

¹²² During the Commission's meeting with Berendsen on 30 January 2019, Berendsen cited [...] and noted that this [...] switched to self-supply in 2017.

¹²³ See the record of Commission's meeting with Berendsen on 30 January 2019 and the record of the Commission's meeting with [...].

¹²⁴ Berendsen's response to Question 10 of the Second RFI.



difficult to be brought back in-house.¹²⁵ The Commission notes that findings of its investigation concur with Elis's view that switching tends to be one way, and that once services are outsourced, they are not likely to be brought back in-house.

Figure 3: Extract from Elis' 2017 Annual Report (I)

The indispensable nature of the Group's services

The flat linen, workwear and HWB appliance rental, laundry and maintenance services the Group provide are essential to its customers' businesses, particularly those in the Hospitality and Healthcare markets. Once these services have been outsourced they are very difficult to repatriate since doing so would require substantial capital expenditure.

Furthermore, the average monthly fee that Group customers pay for the supply and maintenance of flat linen, workwear and HWB appliances is relatively cheap compared to their other expenses. The Group estimates that half of its customers pay less than €150 a month.

Lastly, the Group is able to develop new and complementary products and services for sale to its current customer base.

- 3.56 While Elis' financial statements refer to OPLs in the section titled "MAIN COMPETITORS" (see Figure 4 below),¹²⁶ the Parties' internal documents generally refer to OPLs as [...].¹²⁷ Berendsen's main competitors in Ireland, according to Elis, were: "CWS-Rentokil"¹²⁸, Celtic, Kings".

Figure 4: Extract from Elis' 2017 Annual Report (II)

1.7.2 MAIN COMPETITORS

It is important to note that certain potential customers may choose not to outsource the supply and maintenance of their flat linen, workwear or HWB appliances, preferring to use in-house solutions. For example, some companies make their employees responsible for laundering their workwear in return for a payment that is supposed to cover the costs of laundering. Other companies install in-house laundries to launder flat linen used in their business or workwear worn by their employees.

The Group also faces competition from shared hospital laundries and "ESAT" laundries (entities that employ disabled workers).

For the target market, consisting of businesses that have opted to use a rental and maintenance service, the Group's competitors vary depending on the operating sector and the type of services provided by the Group.

¹²⁵ See Elis' document titled "2017 Registration Document" dated 25 April 2018, which can be accessed at: <https://www.corporate-elis.com/en/investor-relations>.

¹²⁶ Page 40 and 41 of Elis' 2017 annual report.

¹²⁷ For example, see page 3 of Berendsen's internal document titled [...].

¹²⁸ As noted in paragraph 4.65 below, CWS-Rentokil (trading as CWS-boco in Ireland) ceased to provide flat linen rental and maintenance services in Ireland in 2017.



For HWB appliance rental and maintenance services in particular, the Group is in competition with cleaning companies which may be customers of the Group for this type of service, and facility management companies which offer a full range of services including HWB appliance rental and maintenance.

Several major groups operate in all three business segments. Following the merger announced between certain European activities of Rentokil Initial and CWS Boco, the latter will be Elis's main competitor in continental Europe. The Group is also faced with competition from the main national players, the most important of which are indicated below:

- France: Rentokil Initial, Kalhyge (formerly RLD), Anett, Sdez;
- UK: Johnson Service, Initial, PHS, SynergyHealth;
- Ireland: CWS-Rentokil, Celtic, Kings;
- Sweden: Textilia, CWS-Rentokil;
- Denmark: DFD;
- Poland, Baltic counties: CWS-Rentokil, Lindström;

- Austria: Salesianer;
- Czech Republic, Hungary, Slovakia: Lindström, Salesianer;
- Netherlands: CWS-Rentokil, CleanLease, LIPS;
- Norway: Nortekstil, Sentralvaskertiet, Stil;
- Finland: Lindström;
- Brazil: Alisco, Servizi Italia, Renova;
- Spain: Ilunion, PHS, CWS-Rentokil, L'Emporda;
- Germany: CWS-Rentokil, Mewa, Bardusch, Alisco;
- Switzerland: CWS-Rentokil, Bardusch, LBG;
- Portugal: Serlima;
- Belgium-Luxembourg: CWS-Rentokil, Cleanlease, Sterima, Mewa;
- Italy: Servizi Italia, Servizi Ospedalieri, Pedersoli, Alisco, Rentokil Initial;
- Chile: Golden Clean, Lavinur.

3.57 Figure 5 highlights an extract of page 41 of Elis' 2017 annual report which refers to a general trend toward outsourcing with the reasons for customers switching to outsourcing flat linen rental and maintenance services (amongst other services provided by Elis) listed on page 42 of Elis' 2017 annual report.¹²⁹

Figure 5: Extract from Elis' 2017 Annual Report (III)

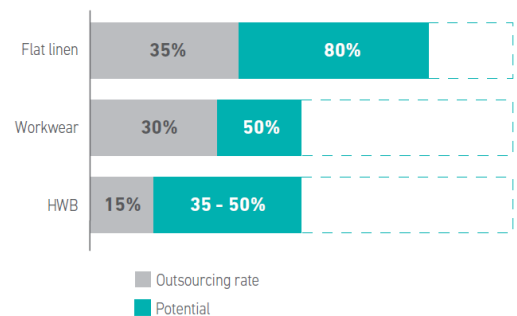
1.7.3 MARKET DEMAND DRIVERS FOR RENTAL, LAUNDRY AND MAINTENANCE SERVICES

The following general and sector-specific trends are the main drivers of demand for flat linen, workwear and HWB appliance rental, laundry and maintenance services in the Hospitality, Healthcare, Industry, and Trade and Services markets:

Outsourcing

Demand for the Group's flat linen, workwear and HWB products and services in the Hospitality, Healthcare, Industry, and Trade and Services end markets is driven by a general trend toward outsourcing. The Group's customers in France tend to outsource these services to a single service provider, such as the Group. According to a study carried out by KPMG, about one-third of textile rental and laundry services were outsourced in France and in Europe as a whole in 2013.

The chart below shows the outsourcing rates for flat linen, workwear and HWB appliance rental, laundry and maintenance services in Europe in 2013 as well as outsourcing potential at maturity:



Source: KPMG (Survey, March 2017).

According to ETSA, the market's upside potential⁽¹⁾ (the study did not provide an exact date, only a time horizon) should mainly be driven by an outsourcing rate that is likely to double in Europe to reach 55% to 65% according to market estimates.

3.58 The level of outsourcing flat linen rental and maintenance services amongst customers is relatively high. The Parties estimated that in 2017 the level of outsourcing was

¹²⁹ Cited reasons include focus on customers' core business, reduction of fixed costs and more efficient management of expenditure, simplification of personnel management, freeing up space for other use, improve the quality of textile laundering and care, enhance brand image and reputation and choose supplier that supports sustainable development.



approximately 63% in the healthcare sector.¹³⁰ Although not a direct comparison, this situation contrasts with the situation described in the 1993 Decision where it was noted that the level of outsourcing for textile rental and associated services was 25%.¹³¹

- 3.59 The Commission's investigation revealed that the linen laundries industry expects the HSE to close its remaining OPLs and outsource flat linen rental and maintenance services to linen laundries in the short to medium term. For example, in paragraph 6.20 of the report titled "*CELTIC LINEN LIMITED, REPORT OF THE INDEPENDENT EXPERT PURSUANT TO SECTION 511 OF THE COMPANIES ACT 2014*" dated 28 September 2016 (the "IER report") it is noted that:

*"One of the growth potential areas in the Healthcare sector relates to in house laundries operated by the HSE. Management understand that these laundries are inefficient and are likely to be outsourced by the HSE in the future. The incremental market is estimated to be worth €7.0 million annually."*¹³²

- 3.60 [...] told the Commission that currently it [...], but noted that purchasing modern laundry equipment would require significant capital investment.

Conclusion on inclusion of self-supply via OPLs in the relevant healthcare product market

- 3.61 The Commission considers that self-supply via OPL is not in the same relevant product market as outsourced flat linen rental and maintenance services for the following reasons:

- a) the fact that some potential purchasers of outsourced flat linen rental and maintenance services currently operate OPLs does not in itself indicate that self-supply is an effective substitute for customers that currently outsource flat linen rental and maintenance services. As noted in paragraph 3.58, currently the majority of customers in the healthcare sector prefer outsourcing to self-supply.
- b) the fact that a very limited set of customers switched to self-supply and did not revert back to linen laundries does not in itself merit the inclusion of self-supply in the relevant product market. The relevant question in assessing this issue is whether a sufficient number of customers currently purchasing outsourced flat linen rental and maintenance services would switch to self-supply, thus preventing the merged entity from imposing price increases. The Commission's investigation revealed this not to be the case.¹³³ For example, the Parties were able to cite only one example of a customer in the healthcare sector switching to self-supply;
- c) the existence of several suppliers of industrial/commercial laundry equipment (including second hand equipment) in the State does not necessarily contradict

¹³⁰ The Commission's analysis of information set out in page 22 of the Merger Notification Form.

¹³¹ In paragraph 7 of the 1993 Decision, the Authority quotes the relevant parties' estimate of 75% for customers that self-supply textile rental and associated services.

¹³² Paragraph 6.20 of the IER report. Also see page 1 of the document titled [...], slide 9 of the document titled [...] dated July 2017 submitted by Berendsen in response to Question 9 of the RFI and page 9 of the document titled "*Celtic Linen Limited Investment Opportunity*" dated September 2016 submitted by Kings Laundry in response to question 10 of the First RFI.

¹³³ See paragraph 3.17 above.



evidence that most customers do not consider self-supply to be a good substitute for the purchase of outsourced flat linen rental and maintenance services. Notwithstanding the views expressed by suppliers of laundry equipment, the Commission points to high rates of outsourcing flat linen rental and maintenance services and evidence in the Parties' internal documents noting [...].¹³⁴ The Parties in the Report on OPLs state that they themselves routinely purchase second hand equipment.¹³⁵ Thus, the existence of several suppliers of industrial/commercial laundry equipment does not in and of itself merit the inclusion of self-supply in the relevant product market; and

- d) the Commission does not agree with the Parties' view that the comparison of OPL set-up costs with customer's revenue is an appropriate test in determining whether self-supply should be included in the relevant product market. In the Commission's view, the appropriate test is whether in response to a 5%-10% price increase a switch to OPL would be economically justifiable. In this regard, the Commission refers to the views of Customers summarised in paragraph 3.17 above. The Parties themselves list a wide range of costs (including lost opportunity costs) that customers must take into account when considering a switch to self-supply.¹³⁶

3.62 The Commission does not agree with the Parties that no factor in the OFT's reasoning for excluding self-supply in *Johnsons Apparelmaster/Cannon* applies in this case. In particular, the Commission notes that adhering to certain hygiene standards is a very significant factor for healthcare customers when considering whether hosting an OPL is a viable alternative to outsourcing of flat linen rental and maintenance services. This was confirmed by several Customers from the healthcare sector.¹³⁷ These Customers noted that ensuring prevention of biocontamination requires significant expertise and is one of the reasons why switching to self-supply in response to a 5-10% price increase would not be a viable option.

3.63 To conclude, the Commission is of the view that self-supply of flat linen rental and maintenance services in the healthcare sector should not form a part of the relevant product market for the reasons set out in paragraphs 3.47 to 3.62 above.

Hospitality market

3.64 Similarly to the healthcare market, the Commission recognises that some hospitality customers currently self-supply flat linen through the use of OPLs. However, the evidence does not support the inclusion of OPLs in the relevant product market. In particular, the Commission investigation has not shown that hospitality customers operating OPLs are competing with linen laundries that provide outsourced flat linen rental and maintenance services¹³⁸ by, for example, participating in tenders issued by purchasers of outsourced flat linen rental and maintenance services.

¹³⁴ Page 1 of the document titled [...] submitted by Berendsen in response to question 9 of the First RFI.

¹³⁵ Paragraph 33 of the Report on OPLs.

¹³⁶ See <https://www.kingslaundry.com/what-is-linen-rental/> accessed on 5 December 2018.

¹³⁷ For example, see the Commission's minutes of meeting with [...].

¹³⁸ The Commission notes one minor exception. [...] indicated that it provides table linen rental and maintenance services to a restaurant located nearby.

- 3.65 For completeness the Commission has considered the degree of switching between hospitality customers who purchase outsourced flat linen rental and maintenance services, and customers who self-supply.

Propensity to switch

- 3.66 The Commission notes that none of the Customers in the hospitality sector contacted directly by the Commission through the Customer Questionnaires (i.e., the most significant customers identified by the Parties) considered switching to self-supply to be a viable option in response by a 5% to 10% price increase by their supplier of outsourced flat linen rental and maintenance services.¹³⁹
- 3.67 The Amárach Survey indicated that just 2% of respondents from the hospitality sector would consider switching to self-supply in response to a 5%-10% price increase imposed by their current provider of outsourced flat linen rental and maintenance services.¹⁴⁰ A subset of respondents who indicated that they would switch to another provider were then asked to identify their most likely action in response to a hypothetical 5% to 10% price increase by all suppliers of outsourced flat linen rental and maintenance services. In total 11%¹⁴¹ of respondents from the hospitality sector considered switching to self-supply¹⁴² to be a viable option. It should also be noted that the likelihood of switching to self-supply decreases with the customer size, and that it is a less viable option the larger the customer. This is illustrated in Table 1 below. The level of actual sales loss as a result of customers switching to OPL is lower than the level of customer loss reported in the Amárach Survey.¹⁴³

Table 1: Hospitality sector respondents' replies to a SSNIP question, by respondent size

Hospitality Sector						
	<10	10-24	25-49	50-100	100+	Total
	0	8	4	12	8	32
Keep purchasing current linen laundry services	0%	63%	50%	66%	50%	59%
Cancel my current service and start to self-supply linen laundry services	0%	38%	25%	17%	13%	22%

¹³⁹ See paragraph 3.17 above.

¹⁴⁰ See slide 51 of the Amárach Survey.

¹⁴¹ This figure is calculated from the 39% who said they would switch provider in response to their own provider price increase. Out of this subsample, 22% said that they would switch to self-supply in response to an industry-wide price increase. The figure is a combination of the initial 2% who said they would switch to self-supply plus the 22% of the subsample.

¹⁴² Slides 51 and 55 of the Amárach Survey.

¹⁴³ In this regard, see slide 19 of the Amárach Survey where respondents' spend by respondent size is reported.



Other specify	0%	0%	0%	0%	0%	0%
Don't know	0%	0%	25%	17%	38%	19%

Source: The Amárach Survey

- 3.68 The Commission notes the Parties' comments in relation to the treatment of "Don't know" and "Other" responses.¹⁴⁴ In this regard, the CMA's Survey Guidelines state the following:

"However, if the customer answers that they would divert to another supplier but in a subsequent question says they do not know which supplier, then this answer is partially informative because they have stated that they would have diverted their expenditure rather than staying with the merger Party or exiting the market."¹⁴⁵ In these circumstances, usual practice is to allocate 'don't know' responses in the same proportions as those who have explicitly named the retailer to which they would divert. (emphasis added)"¹⁴⁶

- 3.69 The Commission interprets the CMA's statement to apply only in the context of estimating diversion ratios between competitors rather than a diversion ratio to an 'exiting the market' option (i.e., stop purchasing and start self-supplying the required services). Therefore, the Commission does not agree that a proportion of respondents who have not explicitly stated whether they will switch to self-supply or not should be assumed as switchers to self-supply. In any case, the Commission reiterates that the Amárach Survey results are not considered definitive in themselves, but are considered alongside empirical data/evidence, where available, in particular, alongside information gathered from the Parties, Competitors and Customers via Market Enquiries.

- 3.70 Information received from the Parties and Competitors indicates that, notwithstanding examples provided by the Parties,¹⁴⁷ customers mainly switch their provider of flat linen rental and maintenance services rather than set up OPLs. In this regard the Commission refers to the following evidence:

- information provided by Berendsen indicates that in the period from 1 January 2014 to 30 June 2018, [...] out of [...] hospitality customers that left Berendsen set up an OPL with the remaining customers switching to Berendsen's competitors;¹⁴⁸
- information provided by Kings Laundry indicates that in the period from 1 January 2014 to 30 June 2018, [...] out of [...] hospitality customers that left

¹⁴⁴ Frontier Economics Report, paragraph 2.10 ii

¹⁴⁵ Note that switching to self-supply is an exit from the merchant market

¹⁴⁶ Paragraph 4.24 of the CMA's Survey Guidelines.

¹⁴⁷ Also see Appendix 4 which sets out organisations that switched to and/from OPLs.

¹⁴⁸ In total, Berendsen listed [...] hospitality customers, but for [...] of these customers it did not indicate whether customers switched to Berendsen's competitors or set up OPLs.



Kings Laundry set up OPLs¹⁴⁹ with the remaining customers switching to Kings Laundry's competitors;¹⁵⁰ and

- c) information provided by [...] indicates that in the period from 1 January 2014 to 30 June 2018, [...], set up OPLs with the remaining customers switching to [...] competitors¹⁵¹.

- 3.71 In this regard, the relevant evidence is the actual switching rate to OPLs across all major providers of outsourced flat linen rental and maintenance services. The switching figures presented in paragraph 3.70 indicate that this rate is very low.
- 3.72 The level of outsourcing of flat linen rental and maintenance services amongst customers is relatively high. The Parties' estimated that in 2017 the level of outsourcing was approximately 90% in the hospitality sector.¹⁵² This contrasts with the situation described in the 1993 Decision where it was noted that the level of outsourcing for textile rental and associated services was 25%.¹⁵³
- 3.73 Some Customers from the hospitality sector (e.g., [...]) contacted directly by the Commission through the Customer Questionnaires noted that they plan to close OPLs that currently cater for some of their linen maintenance requirements and outsource these services to linen laundries. In this regard, the Amárach Survey indicated that 5% of respondents from the hospitality sector that currently operate OPLs stated their intention to purchase outsourced flat linen rental and maintenance services.¹⁵⁴ Furthermore, information provided by Berendsen indicates that in 2018 [...] hotels that previously self-supplied flat linen rental and maintenance services outsourced these services to Berendsen.¹⁵⁵

Conclusion on inclusion of self-supply via OPLs in the relevant hospitality product market

- 3.74 The Commission considers that self-supply via OPL is not in the same market as outsourced flat linen rental and maintenance services in the hospitality sector for the following reasons:
- a) the fact that some potential purchasers of outsourced flat linen rental and maintenance services currently operate OPLs does not in itself indicate that self-supply is an effective substitute for customers that currently outsource flat linen rental and maintenance services. As noted in paragraph 3.56, currently the majority of customers in the hospitality sector prefer outsourcing to self-supply.

¹⁴⁹ The largest of these former Kings Laundry customers (in terms of generated turnover) is [...]. Also see the discussion on Kings Laundry's diversions to OPL in paragraph 4.139 to 4.140 below where it is noted that these switching figures should be considered in the context where Kings Laundry, on average, had [...] hospitality customers in the period from 1 January 2014 to 30 June 2018.

¹⁵⁰ In total, Kings Laundry listed [...] hospitality customers, but for [...], [...] customers closed/went into liquidation and for [...] of these customers it did not indicate whether customers switched to Kings Laundry's competitors or set up OPLs.

¹⁵¹ See [...] response to question 14 of the First Competitor Questionnaire.

¹⁵² The Commission's analysis of information set out in page 22 of the Merger Notification Form.

¹⁵³ In paragraph 7 of the 1993 Decision, the Authority quotes the relevant parties' estimate of 75% for customers that self-supply textile rental and associated services.

¹⁵⁴ Slide 16 of the Amárach Survey.

¹⁵⁵ Berendsen's response to Question 10 of the Second RFI.



Moreover, having regard to information provided by the Customers, further closures of OPLs in the hospitality sector are likely;¹⁵⁶

- b) the fact that a very limited set of customers switched to self-supply and did not revert back to linen laundries does not in itself merit the inclusion of self-supply in the relevant product market. The relevant question in assessing this issue is whether a sufficient number of customers currently purchasing outsourced flat linen rental and maintenance services would switch to self-supply, thus preventing the merged entity from imposing price increases. The Commission's market investigation revealed this not to be the case.¹⁵⁷ For example, Kings Laundry noted that [...] of its customers switched to self-supply since 2014.¹⁵⁸ The Commission also notes that 2 Self-suppliers in the hospitality sector that used to purchase flat linen rental and maintenance services in the past stated that the decision to open OPLs was made primarily due to insufficient level of service quality provided by linen laundries (e.g., delayed deliveries and/or linen cleanliness not meeting required standards) rather than high prices;¹⁵⁹
- c) the existence of several suppliers of industrial/commercial laundry equipment (including second hand equipment) in the State does not necessarily contradict evidence that most customers do not consider self-supply to be a good substitute for the purchase of outsourced flat linen rental and maintenance services. Notwithstanding the views expressed by suppliers of laundry equipment, the Commission points to high rates of outsourcing flat linen rental. The Parties in the Report on OPLs state that they themselves routinely purchase second hand equipment. Thus, the existence of several suppliers of industrial/commercial laundry equipment does not in and of itself merit the inclusion of self-supply in the relevant product market;
- d) while the Parties did provide limited examples of hotels switching to self-supply, the Commission considers that customers are more likely to threaten to switch to their suppliers' competitors rather than setting up an OPL and this is supported by evidence provided by Kings Laundry;¹⁶⁰
- e) the Commission does not agree with the Parties that the comparison of OPL set-up costs with customers' revenue is an appropriate test in determining whether self-supply should be included in the relevant product market. In the Commission's view, the appropriate test is whether in response to a 5%-10% price increase a switch to OPL would be economically justifiable. In this regard, the Commission refers to the views of Customers summarised in paragraph 3.17 above. The Parties themselves list a wide range of costs (including lost opportunity costs) that customers must take into account when considering a switch to self-supply;¹⁶¹

¹⁵⁶ See paragraph 10.26 below.

¹⁵⁷ See paragraph 3.70 above.

¹⁵⁸ Kings Laundry's response to question 29 of the First RFI. Furthermore, Kings Laundry did not provide evidence that [...].

¹⁵⁹ See paragraph 10.40 below.

¹⁶⁰ Kings Laundry provided [...] in response to question 33 of the First RFI.

¹⁶¹ See <https://www.kingslaundry.com/what-is-linen-rental/> accessed on 5 December 2018.



- f) the Commission agrees with the Parties' view that it is easier for customers that already have OPL(s) to take further laundry in-house (at least in theory). However, as noted in paragraph 3.18, hotel groups currently operating OPLs for some of their hotels indicated that a full switch over to existing OPLs is not possible due to capacity constraints. Thus, such groups would have to incur costs associated with expanding OPL capacity (whether by expanding current OPLs or setting up additional OPLs in different locations); and
- g) the Commission does not consider that retaining staff through their redeployment within the hotel during months of low occupancy rates would be a strong reason for considering a switch to OPL. On the contrary, the demand for flat linen rental and maintenance services would also be quite seasonal for such hotels, thus further reducing justification for maintaining an OPL which will not operate at full capacity during months of low occupancy.

3.75 The Commission reiterates its views (summarised in paragraphs 3.56 to 3.57 above) in relation to Elis' financial statements and references to OPLs as main competitors of Elis.

3.76 To conclude, the Commission is of the view that self-supply of flat linen rental and maintenance services in the hospitality sector should not form a part of the relevant product market for the reasons set out in paragraphs 3.45 to 3.75 above.

Assessment of self-supply in the analysis of competitive effects

3.77 The Commission does not dispute the Parties' argument that there is a precedent of NCAs considering self-supply either in the analysis of market definition or in the analysis of competitive effects. However, as noted above, the Commission did not observe any material evidence¹⁶² that hotels or hospitals operating OPLs are competing with linen laundries that provide outsourced flat linen rental and maintenance services. Thus, for all of the reasons set out above, the Commission considers that OPLs do not form a part of the merchant market.

3.78 However, the Commission recognises that in both the healthcare and hospitality markets, certain customers view self-supply as a viable option, and this could potentially act as some level of constraint on suppliers of outsourced flat linen rental and maintenance services. In the Commission's view, the consideration of self-supply is more appropriate in the analysis of competitive effects when examining CBP rather than at a market definition stage, and it is discussed further in Chapter 4.

Does the supply of different categories of flat linen services constitute distinct product markets?

3.79 As noted in paragraph 2.7 above, services provided by linen laundries can be grouped into three broad categories (maintenance only service, rental and maintenance service and managed service). The Parties (as well as their main competitors) can provide all three types of services (depending on a customer's requirements). However, the Commission's investigation revealed that flat linen rental and maintenance services (either as Rental Service or as Managed Service) is the main product offering of both

¹⁶² [...] indicated that it provides table linen rental and maintenance services to a restaurant located nearby.



Parties and their competitors. For example, both Berendsen and Kings Laundry stated that [...] their customers (i.e., hospitality and healthcare customers) availed of outsourced flat linen rental and maintenance services as of June 2018.¹⁶³

Healthcare market

- 3.80 All Customers from the healthcare sector that responded to the Questionnaire to Customers indicated that they opt for a service package that includes both the rental and maintenance of flat linen.¹⁶⁴ Customer contracts and ITTs submitted by the Parties also highlight customers' preference for a service package.
- 3.81 The Commission notes that healthcare customers that chose to purchase flat linen rental and maintenance services would not be likely to find the use of wash-only launderettes to be a good substitute, because wash-only launderettes could not meet the hygiene requirements specified by healthcare customers. For example, a wash-only launderette is highly unlikely to have a barrier wall that prevents cross-contamination.
- 3.82 Hence, for the reasons set out in paragraphs 3.80 to 3.81 above, the Commission is of the view that the supply of flat linen maintenance-only services should not be included in the same product market as the supply of outsourced flat linen rental and maintenance services to customers in the healthcare sector.

Hospitality market

- 3.83 All of the Customers from the hospitality sector that responded to the Questionnaire to Customers indicated that they opt for a service package that includes both rental and maintenance of flat linen¹⁶⁵ with some Customers purchasing a mix of services (e.g., maintenance only service for bed linen but rental and maintenance service for towels). Customer contracts and ITTs submitted by the Parties also highlight customers' preference for a service package.
- 3.84 The Commission's investigation did not find linen processing in wash-only launderettes to be a good substitute for outsourced flat linen rental and maintenance services. For example, the majority of Customers that responded to the Questionnaire to Customers indicated that they would not consider purchasing linen and outsourcing its maintenance to launderettes in response to a 5%-10% price increase of flat linen rental and maintenance services.¹⁶⁶ [...] noted that while using wash-only launderettes is a potential option, there would be concerns whether wash-only launderettes would be able to ensure daily delivery of linen.¹⁶⁷
- 3.85 Hence, for the reasons set out in paragraphs 3.83 to 3.84 above, the Commission is of the view that the supply of flat linen maintenance-only services should not be included in the same product market as the supply of outsourced flat linen rental and maintenance services to customers in the hospitality sector.

¹⁶³ Please see Berendsen's response to question 20 of the First RFI and Kings Laundry's response to question 23 of the First RFI.

¹⁶⁴ See also Customers' views on viability of using wash-only launderettes summarised in paragraph 3.23 above.

¹⁶⁵ See also Customers' views on viability of using wash-only launderettes summarised in paragraph 3.23 above.

¹⁶⁶ See paragraph 10.28 below.

¹⁶⁷ [...] response to question 12 of the Questionnaire to Customers.

Does the supply of rental and maintenance of workwear constitute a distinct product market from rental and maintenance of flat linen?

3.86 The Commission has considered whether the product market encompassing the rental and maintenance of flat linen items should be broadened to include other textile products such as workwear. Berendsen provides standard workwear rental and maintenance services¹⁶⁸ and protective workwear rental and maintenance services¹⁶⁹ while Kings Laundry provides standard workwear rental and maintenance services to customers in the healthcare sector.

Healthcare market

3.87 The Parties noted that healthcare customers typically avail of a broad service package that includes flat linen, surgical scrub suits and other miscellaneous items. The Commission's investigation supported the Parties' views. For example, the majority of the Customers in the healthcare sector that responded to the Questionnaire to Customers noted that they purchase flat linen, surgical scrub suits and other miscellaneous items from the same supplier. ITTs issued by healthcare customers indicate that scrub suits are frequently included in the same lot as flat linen.

3.88 The Commission notes that linen laundries process scrub suits and other miscellaneous items in their facilities catering for flat linen. Some specific equipment is required for processing these items (e.g., ironing machines for scrub suits). In contrast, processing workwear items (both standard and protective workwear items) used in other sectors requires substantially different equipment and Berendsen has separate facilities catering for processing these items. In general, Competitors were of the view that rental and maintenance of workwear is a distinct business from rental and maintenance of flat linen due to the different equipment required for processing of items.

3.89 The Commission is of the view that the provision of workwear rental and maintenance services belongs to a distinct product market. The exception to this is scrub suits and other miscellaneous items provided by linen laundries to customers in the healthcare sector¹⁷⁰ that are generally purchased as a broader service package together with flat linen. Therefore, the Commission is of the view that the relevant product market includes rental and maintenance of scrub suits and other miscellaneous services provided by linen laundries to customers in addition to customers' flat linen requirements.

Hospitality market

3.90 Only one Customer in the hospitality sector that responded to the Questionnaire to Customers ([...]) indicated that it purchases standard workwear (i.e., kitchen wear) rental and maintenance services from the supplier of outsourced flat linen rental and maintenance services. The Commission also notes that contracts with customers provided by the Parties indicate that the scope of contracted services typically includes

¹⁶⁸ Standard workwear is supplied to customers in healthcare and hospitality sectors and includes items such as chefs wear, waiter wear, catering wear and surgical scrub suits. In the healthcare sector, Berendsen also processes other miscellaneous items (e.g., patient gowns and slings).

¹⁶⁹ Protective workwear is supplied to industrial customers (e.g., food and beverage companies, utilities etc.) and includes textile products and technical products (protective glasses, gloves, helmets etc.).

¹⁷⁰ Items such as patient gowns.



flat linen only. Customers from other sectors purchasing workwear rental and maintenance services (e.g., Intel and Pfizer) do not require outsourced flat linen rental and maintenance services.

- 3.91 The Commission is of the view that the provision of workwear rental and maintenance services belongs to a distinct product market.

Overall conclusion on the scope of the relevant product markets

- 3.92 In order to assess and determine whether the Proposed Transaction might result in an SLC, the Commission has defined relevant markets as follows:

- a) there are separate markets for the provision of outsourced flat linen rental and maintenance services to healthcare customers and to hospitality customers;
- b) self-supply of laundry services via OPL is not included in the healthcare or the hospitality market for the provision of flat linen rental and maintenance services;
- c) the supply of flat linen maintenance-only services is not included in the healthcare or the hospitality market for the provision of outsourced flat linen rental and maintenance services; and
- d) the provision of workwear rental and maintenance services (with the exception of scrub suits and other miscellaneous items provided by linen laundries to healthcare customers) is not included in the healthcare or the hospitality market for the provision of outsourced flat linen rental and maintenance services.

Relevant geographic markets

- 3.93 Taking into account the views expressed by the Parties, the Commission considered whether: (i) the geographic scope should be narrower than the State (discussed in paragraphs 3.94 to 3.103 below); and (ii) the geographic scope should be broader than the State (i.e., include Northern Ireland) (discussed in paragraphs 3.104 to 3.110 below) for each of the relevant product markets.

Local/Regional scope

- 3.94 In relation to the healthcare market, the Commission notes that all 3 linen laundries that provide flat linen rental and maintenance services to healthcare customers on a significant scale (i.e., the Parties and [...]) provide a [...]. [...] told the Commission that it breaks geographic regions into separate lots in its ITTs.¹⁷¹ The OGP does not have geographic differentiation in its RFT for admission to the Framework Contract,¹⁷² but retains the option to run the follow-up mini-competitions of a geographical basis. The Commission observed that both Berendsen and [...] have tended to participate in the HSE's tenders irrespective of geographic location. Customer location maps provided by

¹⁷¹ See the Commission's minutes of meeting with [...].

¹⁷² See paragraph 2.12 for a description of the OGP Framework.



the Parties indicate that there are a significant number of healthcare customers located more than [...] kilometres away from the Parties' facilities catering for these customers.

- 3.95 In relation to the hospitality market, the Commission's investigation provided mixed evidence on whether the geographic scope of the relevant product market is regional or national in scope.
- 3.96 Some of the Customers that responded to the Questionnaire to Customers indicated that they purchase outsourced flat linen rental and maintenance services on a regional basis from several linen laundries (e.g. [...]).
- 3.97 The Commission notes that the activities of [...] are limited to areas that are in relative proximity to their facilities.¹⁷³ In general, the Commission observed evidence indicating that distribution costs do affect the competitiveness of linen laundries. In this regard, [...] noted that linen laundries that are able to refill their vehicles carrying flat linen more than once per day have a distinct economic advantage compared to linen companies that refill their vehicles once a day.¹⁷⁴ The Commission's investigation revealed that there are some variances in competitive conditions across the regions in the State with hospitality customers in some regions having more alternative options compared to hospitality customers in other regions. However, the Commission considers that, in the supply of outsourced flat linen rental and maintenance services, regions within the State do not exhibit precise and stable boundaries in which conditions of competition are sufficiently homogenous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different.
- 3.98 There is considerable evidence indicating that the geographic market for the supply of outsourced flat linen rental and maintenance services to hospitality customers is national in scope.
- 3.99 First, the majority of Customers from the hospitality sector that responded to the Questionnaire to Customers (80%) indicated that the distance between their premises and the linen laundry's facility where flat linen is taken for maintenance is not a very important factor when selecting a supplier as long as the service is offered on a regular basis and the linen laundry is able to adapt quickly to the customers' needs.¹⁷⁵ In this regard, Kings Laundry indicated that [...] out of [...] ([...])% hotel groups seek one supplier of outsourced flat linen rental and maintenance services across all of their sites (i.e., a national supplier).¹⁷⁶ While the Commission is of the view that this group of hospitality customers does not form a distinct product market, the Commission recognises that these customers may have a more limited set of options when compared to individual hotels.
- 3.100 Second, Berendsen, Kings Laundry and [...] service customers and participate in tenders for hospitality customers located across the State. Moreover, Kings Laundry and [...] were competing with Berendsen on a national basis at the time when each of them had facilities in only one geographic location. The Commission also notes that for long

¹⁷³ Also see Table 7 below which sets out linen laundries' turnover in 2018 by geographic regions.

¹⁷⁴ [...] response to question 9 of the First Competitor Questionnaire.

¹⁷⁵ See paragraph 10.19 below.

¹⁷⁶ Kings Laundry's response to question 20 of the First RFI.



distances, linen laundries may install depots across the State that serve as hubs to service their customer needs.¹⁷⁷

- 3.101 Third, Berendsen noted that distribution costs accounted for [...] % of its total costs of sales and did not consider it to be the most important factor in determining the price of flat linen rental and maintenance services¹⁷⁸. Berendsen highlighted that [...] is the primary determinant of distribution costs due to the fact that the majority of transportation costs are related to [...]. Berendsen further noted that driving time is not necessarily reflective of the distance travelled as some customer locations (e.g., Dublin City centre) have high traffic volume, thus leading to a longer driving time than would be reflected by its distance from Berendsen's facilities.
- 3.102 Fourth, [...] confirmed that it has expanded its operations to [...], thus indicating that expanding activities without building an additional facility is possible.¹⁷⁹
- 3.103 Having regard to the evidence presented in paragraphs 3.94 to 3.102 above, the Commission, on a conservative basis, considers that the scope of the relevant geographic markets is not narrower than the State. Whilst distribution costs do affect the competitiveness of suppliers over long distances, this effect is not strong enough to preclude linen companies from competing throughout the State. However, the location of linen laundries' facilities is further considered, where relevant, in the competitive assessment.

All island scope

- 3.104 The Commission did not observe any significant evidence that would merit the inclusion of Northern Ireland in the scope of the relevant geographic market in either the healthcare or hospitality sector.
- 3.105 In the healthcare sector, the Commission did not observe any evidence that linen laundries based in Northern Ireland are providing services to healthcare customers in the State. In this regard, [...] noted that the last time it participated in any HSE tender was over ten years ago.¹⁸⁰
- 3.106 In the hospitality sector, the Commission notes that both [...] provide services to hospitality customers in the State from their facilities in Northern Ireland. However, their activities in the State are relatively minor and in general limited only to Dublin and/or counties bordering Northern Ireland. Neither of these linen laundries indicated to the Commission that they intend to make significant expansion by, for example, opening facilities in the State. In this regard, the Commission notes that, according to [...] was invited to participate in its tender, but did not submit a bid.¹⁸¹

¹⁷⁷ The Parties indicated that for longer distances, linen laundries can utilise a system known in the industry as 'trunking'. This means that textiles, collected by the vans in the depot catchment area, are transported in bulk over night to a laundry facility, handled there, and then trunked back via Heavy Goods Vehicle trucks to the depot for them to be distributed back to local customers.

¹⁷⁸ Berendsen's response to Question 16 of the First RFI.

¹⁷⁹ See the Commission's record of a phone call with [...] dated 16 October 2018.

¹⁸⁰ See the Commission's record of a phone call with [...] dated 20 February 2019.

¹⁸¹ This was also confirmed by [...] during the Commission's telephone call with [...] on 20 February 2019.



- 3.107 The Amárach Survey indicated that just 1% of respondents from the hospitality sector purchase outsourced flat linen rental and maintenance services from linen laundries based in Northern Ireland.¹⁸²
- 3.108 The Commission's market investigation also indicated that some of the customers having premises in Northern Ireland (e.g., [...]) purchase flat linen rental and maintenance services for these premises from linen laundries operating in Northern Ireland rather than linen laundries operating in the State. In instances where customers with premises in Northern Ireland purchase flat linen rental and maintenance services from a single linen laundry, the Commission observed evidence that services to premises located in Northern Ireland are outsourced to linen laundries that have a larger footprint in Northern Ireland. For example, in the Merger Notification Form Berendsen indicated that it [...]¹⁸³, while Kings Laundry indicated that it [...].¹⁸⁴
- 3.109 Finally, Berendsen in its internal documents noted that [...]¹⁸⁵ and illustrated that [...].
- 3.110 Thus, the Commission is of the view that the scope of the relevant geographic market should not be broadened to include Northern Ireland in either of the relevant product markets.

Overall conclusion on the scope of the relevant geographic markets

- 3.111 Having regard to the evidence presented in paragraphs 3.94 to 3.110 above, the Commission considers that for the purpose of this Determination, the markets for the supply of flat linen rental and maintenance services to: (i) healthcare customers; and (ii) hospitality customers, are national in scope.

Overall conclusion on relevant market definition

- 3.112 Having regard to the evidence available to it, the Commission considers that the relevant markets for the competitive assessment of the Proposed Transaction are:
- (i) the market for the outsourced supply of flat linen rental and maintenance services to healthcare customers¹⁸⁶ in the State; ("the healthcare market"); and
 - (ii) the market for the outsourced supply of flat linen rental and maintenance services to hospitality customers¹⁸⁷ in the State ("the hospitality market").

¹⁸² See slide 11 of the Amárach Survey.

¹⁸³ Footnote 6 of the Merger Notification Form.

¹⁸⁴ Footnote 9 of the Merger Notification Form.

¹⁸⁵ See document titled [...] submitted by Berendsen in response to Question 9 of the First RFI.

¹⁸⁶ As defined in paragraph 3.92.

¹⁸⁷ As defined in paragraph 3.92.

4. COMPETITIVE ASSESSMENT – UNILATERAL EFFECTS

Counterfactual

- 4.1 The counterfactual refers to the state of competition without the merger, and provides the point of comparison for assessing the competitive effects that arise from a merger. The Commission generally adopts the prevailing conditions of competition as the counterfactual against which it assesses the impact of the merger.¹⁸⁸ Identifying the relevant counterfactual is forward-looking and necessarily involves judgement on the part of the Commission.¹⁸⁹
- 4.2 The counterfactual has to be plausible in light of available evidence. For example, the ECJ held that the available evidence must support the EC's conclusion that *"..if such a [merger] decision were not adopted, the economic development envisaged by it [EC] would be plausible."*¹⁹⁰ The competitive assessment then asks whether the merger compared to the counterfactual will lead to an SLC.
- 4.3 The Commission's counterfactual is that, absent the merger, Berendsen and Kings Laundry will continue to compete for the supply of outsourced flat linen rental and maintenance services to customers in both the hospitality and healthcare markets, and that Kings Laundry is likely to expand its activities in the healthcare market, including supply to public and private hospitals and to nursing homes. Under the prevailing conditions of competition, there are currently three main suppliers¹⁹¹ of outsourced flat linen rental and maintenance services in the healthcare market, namely: Berendsen, Celtic Linen and Kings Laundry. The Commission notes that, in the period 2014-2018, Kings Laundry has increased its market share in both the healthcare market and the hospitality market.¹⁹² The Commission's judgement is that, absent the merger, and based on evidence from its investigation, the most plausible counterfactual is that Kings Laundry will continue to expand in both the hospitality and healthcare markets.
- 4.4 The Parties, in their written and oral submissions, disagreed with the Commission's counterfactual insofar as it related to the Commission's finding that, absent the merger, Kings Laundry will continue to expand in the healthcare market, particularly by supplying flat linen rental and maintenance services to public hospitals.
- 4.5 Key arguments put forward by the Parties were:
- a) Kings Laundry's alleged intention to expand in healthcare is unconvincing;¹⁹³ and

¹⁸⁸ Paragraph 1.12 of "Guidelines for Merger Analysis" adopted by the Commission on 31 October 2014 (the "Commission's Merger Guidelines").

¹⁸⁹ *Ibid*, paragraph 1.14.

¹⁹⁰ Case C-12/03 P *Commission v Tetra Laval* EU:C:2005:87, paragraph 44.

¹⁹¹ Supply from other linen laundries accounts for less than 2% of the market

¹⁹² Kings Laundry's market share has increased between 2014 and 2018 from [0-10]% to [10-20]% in the healthcare market, and from [20-30]% to [30-40]% in the hospitality market.

¹⁹³ Parties' Response, paragraph 4.2.5.1.



- b) The Commission fails to establish that Kings Laundry will overcome barriers to expansion in healthcare.¹⁹⁴

- 4.6 The Commission has considered in detail each of these two lines of argument advanced by the Parties.

Kings Laundry's intention to expand in the healthcare market

- 4.7 The Parties' claimed that, in response to the RFIs issued by the Commission, and in further submissions, Kings Laundry has stated that it had "[...]".¹⁹⁵ In support of this argument, the Parties claimed that Kings Laundry's statement in its [...] was "loose talk"¹⁹⁶ and "simply not credible".¹⁹⁷
- 4.8 The Parties noted that Kings Laundry stated in a meeting with the Commission that "[...]". In the same meeting, Kings Laundry stated that they had "[...]".¹⁹⁸
- 4.9 The Commission has fully considered these points in the light of all the evidence obtained during the market investigation. The Commission recognises that Kings Laundry has made statements post-merger notification that it does not intend to expand in healthcare. As set out in the Commission's Merger Guidelines, the Commission expects the merging parties to substantiate "*...any counterfactual they propose with objective evidence.....such evidence and analysis should obviously be consistent with the parties own internal pre-merger assessments of the likely counterfactual*" (emphasis added).¹⁹⁹ Furthermore, the Commission notes that it "*...will give much greater weight to evidence that pre-dates the announcement of the merger under review in comparison to post-merger announcement evidence, because the behaviour of the merging parties vis-a-vis each other and third parties (i.e. customers, competitors and suppliers) is likely to be heavily influenced by the announcement of the merger*" (emphasis added).²⁰⁰
- 4.10 The Commission's approach to the treatment of evidence is in line with guidelines produced by the International Competition Network, which state that:

*"Pre-existing documents that were prepared before the merger was under consideration are especially useful. Pre-existing documents are valued by agencies for the opportunity to see how the parties acted and how they viewed competition and markets before they had the merger in mind."*²⁰¹

"It may be helpful to request from undertakings involved in the merger (or indeed other firms active in the market) their commercial strategies and other internal documents such as internal communications, public statements, and studies on consumer preferences, market research, advertising plans, general marketing plans or business plans. These may indicate which products the

¹⁹⁴ Parties' Response, paragraph 4.2.5.2.

¹⁹⁵ Parties' Response, paragraph 4.2.8.

¹⁹⁶ Parties' Response, paragraph 4.2.7.2.

¹⁹⁷ Frontier Economics Report, Paragraph 3.8.b.

¹⁹⁸ Parties' Response, paragraphs 4.2.11.1 to 4.2.11.2.

¹⁹⁹ Paragraph 1.15 of the Commission's Merger Guidelines.

²⁰⁰ Paragraph 7.11 of the Commission's Merger Guidelines.

²⁰¹ ICN (2005), *Investigative Techniques Handbook for Merger Review*, p.39. This may be accessed at www.internationalcompetitionnetwork.org.



undertakings believe to be the closest substitute to their own products and may also provide information on which companies they consider to be their competitors.”²⁰²

- 4.11 The Commission considers that Kings Laundry’s post-merger notification claims that it does not intend to expand in healthcare are contradicted by pre-merger notification statements made by Berendsen. The Commission’s review of Berendsen’s internal documents shows that Berendsen [...]. Berendsen articulated that [...] and Berendsen referred to the Proposed Acquisition as a “[...]”²⁰³ According to the Parties’ written submission, the Commission is incorrect to assume that this quote refers to the healthcare market. However, in another document Berendsen also noted that [...].²⁰⁴ In their post-merger notification written and oral submissions, the Parties suggested that the Commission should not give weight to the comments in these internal documents and comments made by [...] in an email to [...]. According to the Parties, [...].²⁰⁵ The Commission considers that the pre-merger notification statements in the internal documents of Berendsen and comments made by one of its senior officials are self-explanatory and cannot be dismissed by post-merger notification statements that attempt to give those statements different meaning or significance.
- 4.12 The Commission also considers that Kings Laundry’s behaviour in the healthcare market and pre-merger statements concerning its healthcare business contradict its post-merger statements. Kings Laundry continues to grow its market share in the healthcare market. In addition, Kings Laundry stated in its response to the Commission’s RFI that it [...].²⁰⁶ The Commission recognises that this consideration was at a preliminary stage, but notes that Kings Laundry had gone as far as [...]. In addition, and as noted in the Parties’ submission, in responding to an ITT issued by [...] in 2018, Kings Laundry stated that: [...].²⁰⁷ [...] confirmed that, in its view, Kings Laundry planned to build a new laundry facility specifically for healthcare customers. In this regard, [...] noted that while they did not recall seeing specific plans, their view was that it was a genuine plan and not merely an aspiration.²⁰⁸ When asked by the Commission during the Parties’ oral submissions what it would have done had it won the tender for Mater Private Hospital, Kings Laundry responded that it would have entered into and fulfilled the contract. In the Commission’s view, these examples of behaviour and pre-merger statements are clear indications of an intention to expand in healthcare.
- 4.13 The Commission considers that Kings Laundry’s pre-merger notification statements and its performance, taken together with Berendsen’s pre-merger notification statements and those of the [...], provide credible evidence to support the Commission’s view that, absent the merger, the most plausible counterfactual is that Kings Laundry will continue to expand in both the healthcare and the hospitality markets. The Commission has seen no pre-merger notification evidence that would suggest that Kings Laundry had decided

²⁰² ICN (2006), *Merger Guidelines Workbook*, Prepared for the Fifth Annual ICN Conference in Cape Town, April 2006, p.21 (emphasis in original).

²⁰³ Slide 24 of the Document titled [...], dated 23 March 2018 submitted by Berendsen in Appendix G of the Merger Notification Form.

²⁰⁴ See internal email between Berendsen and Elis titled [...], dated 2 February 2018 provided by Berendsen in response to Question 1 of the First RFI.

²⁰⁵ Parties’ Response, paragraph 4.2.45.

²⁰⁶ Kings Laundry’s response to Question 14 of the RFI. In responding to this question Kings Laundry noted that it [...].

²⁰⁷ This was provided by Kings Laundry to the Commission in response to Question 27 of the First RFI. Furthermore, on 27 February 2019 Kings Laundry indicated that it was the [...].

²⁰⁸ See email from [...] dated 9 May 2019.

to change from a growth strategy in healthcare to one where it was not interested in expanding.

Barriers to entry and expansion

- 4.14 The Commission notes at the outset that there is no disagreement between the Commission and the Parties that Kings Laundry is currently active in the healthcare market. In their written and oral submissions, the Parties claimed that the Commission's relevant counterfactual *"does not adequately address how Kings Laundry will overcome the barriers to expansion in the healthcare market.... In particular, the Commission has not sufficiently demonstrated that Kings Laundry (i) would implement the necessary accreditations in a timely and sufficient manner; and (ii) has the requisite prior experience to expand in healthcare"*.²⁰⁹ Furthermore, the Parties claimed that the Commission has not applied the same criteria as it applied to Kings Laundry to evaluate the potential entry or expansion of other competitors, notably OCL.²¹⁰
- 4.15 The Commission recognises that there are a number of barriers to entry and expansion in the healthcare market. These include financial barriers, particularly for new entry to the healthcare market, and non-financial barriers such as accreditation and experience. Barriers to entry and expansion are discussed in more detail in the assessment of competitive constraints below²¹¹. For the purposes of establishing the counterfactual against which the impact of the merger can be measured, the relevant consideration is whether the Commission is correct to view Kings Laundry as an important competitor in the identified relevant markets.
- 4.16 While Kings Laundry currently services healthcare customers from its Dublin plant, it has stated that its facility in Cork can be upgraded to cater for private healthcare customers within [...] at an additional cost of €[...] to €[...].²¹² In the Commission's view, the ability to upgrade within this timeframe, and with this level of investment would be considered as an ability to expand in a timely and sufficient manner.²¹³ Based on evidence from site visits and discussions with third parties, the Commission's understanding is that, once a laundry has put in place the infrastructure needed to process laundry from private hospital customers, there is no additional physical facility required to supply public hospitals. The additional requirements for public hospitals are those associated with meeting tender requirements for accreditation and being able to meet other tender requirements such as demonstrating relevant experience.
- 4.17 The Commission agrees that healthcare customers require suppliers of flat linen rental and maintenance services to adhere to: (i) hygiene standards that specify the level of quality²¹⁴ required for the processing of flat linen in terms of bio-contamination control;

²⁰⁹ Parties' Response, paragraph 4.2.13.

²¹⁰ Parties' Response, paragraph 4.2.22.

²¹¹ Paragraphs 4.188 to 4.195 (hospitality market) and 4.332 to 4.352 (healthcare market).

²¹² Kings Laundry's response to Question 27 of the Second RFI. The Commission notes that [...].

²¹³ According to paragraph 6.5 of the Commission's Merger Guidelines, *"...entry that is effective within two years is normally considered timely..."*. Paragraph 6.6 states that *"The likelihood of entry post-merger generally depends on the profitability of entering the market..."*. Paragraph 6.8 notes that *"For entry to be sufficient, it must be likely that incumbents would lose significant sales to new entrants..."*

²¹⁴ The Commission understands that there are two commonly cited standards: (i) NHS Executive HSG(95)18, *"Hospital laundry arrangements for used and infected linen"*, dated 21 April 1995; and (ii) and BS EN 14065:2002, *"Textiles – Laundry Processed Textiles – Biocontamination Control System"*, dated 6 December 2002 (known in the industry as the risk analysis bio-contamination control ("RABC") standard). In 2016 this standard was superseded by BS EN 14065:2016.



and, (ii) certain linen²¹⁵ processing guidelines. For instance, the tender document for the supply of flat linen rental and maintenance services to healthcare customers in respect of St. James' Hospital stated the following in relation quality assurance:

*"Tenderers must demonstrate satisfactory internal quality assurance mechanisms in place and accreditation attained. Tenderers must also demonstrate external quality assurance and accreditation – ISO, RABC Standard EN 14065 and HSG 95(18) or equivalent".*²¹⁶

- 4.18 Kings Laundry has experience of addressing hygiene standards and linen processing guidelines through its work for private hospitals. According to Kings Laundry: "[...]".²¹⁷
- 4.19 The Commission recognises that public hospitals generally have more formal requirements than private hospitals, particularly in specifying quality standards such as the RABC. The Commission recognises that, to supply public hospitals, Kings Laundry would need to apply for additional formal accreditation. According to the NSAI, such accreditation usually takes 3-4 months from application to registration. The Commission notes also the views of a competitor that implementing these accreditations requires considerable input and effort.²¹⁸ The Commission is of the view that the administrative effort involved in applying for accreditation, and effort involved in implementing and maintaining the required standards are far from insurmountable for Kings Laundry. The Commission notes that Kings Laundry has stated that, in providing flat linen services to private hospitals, it is already meeting many of the requirements in the guidelines. Indeed, in a meeting with the Commission, Kings Laundry stated that: *"The cost of RABC accreditation is not significant and can be obtained in a short timeframe. Obtaining ISO accreditation is significantly more costly and lengthy"*.²¹⁹ Given that, as noted in paragraph 4.18 above, King's Laundry has already obtained what it considers to be the more costly and lengthy ISO accreditation, and already has experience of implementing and adhering to hygiene standards, the Commission considers that it is reasonable to assume that, absent the merger, Kings Laundry will be able to overcome the effort required to comply with public hospitals' requirements for accreditation.
- 4.20 The Commission recognises the importance of previous experience in winning tenders for hospitals. For example, the ITT from St Vincent's University Hospital asks tenderers to demonstrate: *"Your company's skills, efficiency, experience and reliability in delivering similar supplies and services in a comparable operational environment. Firm preference is for an acute hospital environment..... How the skills and experience gained from those contracts can be transferred to the Contracting Authority's contract."*²²⁰
- 4.21 Similarly, when the HSE issued a tender for a Framework Contract (issued in late 2018, later withdrawn) it emphasised the requirement for bidders to have a *"an experienced Senior Management Team capable of directing and managing the delivery of the*

²¹⁵ For example, see Health Service Executive's ("HSE") guidelines for managing laundry and linen in healthcare facilities which can be accessed at: <https://www.hse.ie/eng/about/who/healthwellbeing/infectcont/sth/gl/ipcc-guidelines-section-9.pdf>.

²¹⁶ For more information, see section 12.3 "Selection criteria" of the St. James Hospital ITT document.

²¹⁷ Kings Laundry's response to Question 21 of the First RFI.

²¹⁸ Meeting Minutes with [...]. In respect of the RABC standard specifically, the NSAI informed the Commission that such accreditation would usually take about 3-4 months, i.e., from "application to registration" to obtain. The NSAI also noted that this depends on non-conformances which extend the timeline. See NSAI's email dated 8 February 2019.

²¹⁹ Meeting minute 1 February 2019.

²²⁰ Appendix 8, St Vincent's University Hospital ITT, 3 May 2018.



*Services” and stated that experience of providing “healthcare laundry linen services” is essential: “Tenderers must demonstrate that they have successfully delivered contracts of a similar nature to the HSE’s requirements during the last three years by providing a list of its previous significant contracts delivered over the last three years.”. This was to be supported by references.*²²¹

- 4.22 The OGP’s tender for a Framework Agreement²²² (issued in June 2019) requires bidders to provide *“summary details of three contracts in which they have successfully delivered Services of a similar nature to the Services required....within the last three years”*. Contracts must each have *“...a minimum value of €144,000 per year of contracts”*, and one of the contracts *“...must be in place or have been in place for more than 2 years.”* The Commission notes that the requirement for experience constitutes a barrier to entry for any linen laundry that is not already active in supplying hospitals, and that this would be a considerable barrier for all laundries with the exception of Berendsen, Celtic Linen and Kings Laundry, who all meet the qualification criteria for experience in delivering healthcare contracts.

Potential market entry

- 4.23 In their written and oral submissions, the Parties claimed that, in developing its counterfactual, the Commission has not evaluated potential market entry and expansion by competitors other than Kings Laundry, and in particular has *‘disregarded evidence of OCL’s intention to expand in healthcare’*.²²³
- 4.24 The Commission notes that the Parties’ submission in respect of OCL is not relevant for the purposes of establishing the relevant counterfactual for the purpose of assessing the likely competitive effects of the Proposed Transaction. The question of whether or not OCL and other linen laundries active in the hospitality market are likely to enter the healthcare market is discussed in more detail in discussing unilateral effects in paragraphs 4.332 to 4.352 below.

Conclusion on counterfactual

- 4.25 The Commission’s considers that, pre-merger, Kings Laundry had the ability and intention to continue expanding in both the hospitality and healthcare markets, and had the potential to supply all types of healthcare customers, including public hospitals. The Commission bases this view on evidence provided by Kings Laundry’s actions and statements pre-merger notification, on Berendsen’s views expressed in internal documents, and notes that these views were supported by a healthcare customer. The Parties’ submissions suggesting a counterfactual that Kings Laundry will change strategy and stop expanding in healthcare is not supported by evidence other than post-merger notification statements.
- 4.26 In light of the above, the Commission concludes that the most plausible and relevant counterfactual is that, absent the merger, Berendsen and Kings Laundry will continue to compete for the supply of flat linen rental and maintenance services to customers in

²²¹ <https://ted.europa.eu/udl?uri=TED:NOTICE:429143-2018:TEXT:EN:HTML&src=0>

²²² The OGP, Request for Tender dated 4/06/19 to establish a Multi-Supplier Framework Agreement for the provision of and management of laundry and hire of linen, curtains, workwear and dust mat hire services.

²²³ Parties’ Response, paragraph 4.2.22.



both the hospitality and healthcare markets, and that Kings Laundry is likely to expand its activities in the healthcare market.

The nature of competition

4.27 The Commission's approach to the assessment of horizontal mergers is set out in the Merger Guidelines.²²⁴ The analysis of a proposed merger may cover unilateral and coordinated effects. The analysis considers whether product markets are homogenous or differentiated.

4.28 Before analysing each of the relevant healthcare and hospitality markets, the Commission sets out in this section its overall approach to considering the nature of competition in both markets.

Bidding markets

4.29 The Commission notes that competition in the healthcare and hospitality markets takes place for contracts (which may be formally tendered or informally negotiated on the basis of requests for proposals) rather than via posted prices. In essence, both the healthcare and hospitality markets are bidding markets.

4.30 According to the Merger Guidelines,

*"In some markets, particularly bidding markets, the number of possible suppliers can influence the intensity of competition. For example, in tendering processes the greater the number of firms able to tender for the supply of products or services, the more likely it is that there will be intense competition."*²²⁵

4.31 The OECD states that: *"Merger analysis is not significantly changed by the existence of a bidding process. Markets where bidding processes are used are subject to similar economic forces as those in other markets. As in any merger analysis, it is important to understand the competitive constraints to which the merging parties are subject and to ground the choice of economic model in an analysis of the factual circumstances."*²²⁶

4.32 The Commission notes that both the Merger Guidelines and the OECD emphasise the need to fully and widely consider competitive effects in all merger analyses. This is further confirmed in work carried out for the CMA's predecessor the OFT, which states that: *"...bidding processes are unlikely to create significantly different issues to those that may arise in a more traditional market. In particular, there is no 'bright-line' distinction between a 'bidding market' and a 'conventional market'; bidding processes are not all the same and case-specific analysis will always be needed to understand how competition works; and there is no 'ideal' bidding process that works well in all circumstances, especially not with few bidders."*²²⁷

4.33 This sets the context within which the Commission has considered the healthcare and hospitality markets as bidding markets. Turning to specific aspects of the nature of

²²⁴ Merger Guidelines, paragraphs 4.1 to 4.40.

²²⁵ Merger Guidelines, paragraph 4.39.

²²⁶ OECD, Policy Roundtables, 'Competition in Bidding Markets' 2006.

²²⁷ DotEcon for the OFT, 'Markets with Bidding Processes', 2007.



bidding markets, Klemperer²²⁸ notes that *“The existence of a bidding market is commonly cited as a reason to tolerate the creation and maintenance of highly concentrated markets.”* In common with the Merger Guidelines and the OECD approach, Klemperer warns against the contention that, in bidding markets, ordinary competition concerns do not apply. In particular, he cites a number of fallacies often put forward to justify the contention that in bidding markets, market share does not imply market power, and that the existence of two firms is enough to imply perfect competition (or even that one firm may be enough).

4.34 The OECD²²⁹ notes that “ideal” bidding markets would typically exhibit the following characteristics:

- a) competition is “winner takes all,” so each supplier either wins all or none of the contract;
- b) competition for contracts is “lumpy,” so that each contest is large (and, therefore, important) for a supplier relative to its total sales over a period;
- c) competition begins afresh for each contract (and for each customer), such that when tenders are repeated, the outcome of a previous tender does not impact on the outcome of another tender (this broadly corresponds to tenders taking place infrequently); and
- d) market entry is easy.

4.35 In an “ideal” bidding market exhibiting characteristics (a) to (d), two identical firms would fit the standard Bertrand model of competition in a homogenous product market with many consumers. In this model, assuming constant marginal costs and no capacity constraints, two identical firms would theoretically be sufficient to achieve a perfectly competitive outcome (i.e., prices being equal to marginal cost), and historic market shares – which would essentially reflect the random choice of customers amongst identical suppliers – would not imply future market success or indeed market power.

Views of the Parties

4.36 In the Parties’ written and oral submissions, the Parties argued that both hospitality and healthcare markets are bidding markets, and exhibit the following characteristics:

“a bidding process is used by customers to choose a supplier (either by formal tendering or the informal gathering of quotes);

the winner of each tender serves the entirety of the customer’s needs which are up for award. Therefore, there is no smooth trade-off between the price offered and the quantity sold. Any customer losses are not marginal declines in turnover, but rather losses of entire contracts.

²²⁸ P. Klemperer (2005), “Bidding Markets”, Competition Commission discussion paper.

²²⁹ OECD, Policy Roundtables, *ibid*.



customers are not locked into relationships with suppliers, so the outcome of one contest does not determine the outcome of a subsequent contest.

Because each tender is a separate competition, the prices offered in one bid do not affect the prices offered in other bids”.²³⁰

- 4.37 The Parties then proposed that “... in the context of bidding markets, a customer issues a contract for a specific set of goods or services, to which suppliers respond with the best price at which they can provide this product. The scope for differentiation with respect to any individual customer, is therefore limited. This reduction in the scope for firms to differentiate themselves intensifies the degree of competitive pressure they face. In fact, the standard economic result is that with no differentiation at all between firms, only two firms are required to produce competitive outcomes in the market”.²³¹ And in a footnote: “Specifically, two symmetric firms competing in [sic] prices for a homogenous product will result in prices being set equal to marginal costs.”²³²
- 4.38 The Parties defined particular features of such bidding markets and claimed that in markets that exhibit these features “market shares are of limited, if any, or no relevance – they simply show past success rather than whether firms are viable options in the future for customers. A high post-merger market share for the Parties does not equate to the possession of market power”.²³³ The Parties argued that in ‘bidding markets’ even a limited number of rivals can produce highly competitive outcomes, and that there would only be a competition impact if the merging parties were first and second ranked by the buyer (e.g., on the basis of providing the offer with the lowest and second lowest price), as only in this case they would constrain each other.²³⁴

Views of the Commission

- 4.39 The Commission considers that the dynamics of the healthcare and hospitality markets indicate that they are not “ideal” bidding markets. An “ideal” bidding market relies on suppliers selling undifferentiated products, and the customer choosing the lowest-priced bidder, whose bid is only constrained by the second-lowest bidder in the sense that the winning bid must, by definition, be lower than the second lowest bid. In this scenario, eliminating a competitor through a merger would not necessarily reduce the constraints faced by the remaining competitors except in the case where the merging parties are the first and second ranked bidder.
- 4.40 The Commission has considered the features of the healthcare and hospitality markets against each of the characteristics of an “ideal” bidding market as set out in paragraph 4.34 and has formed the view that these markets do not exhibit features of an “ideal” bidding market. The Commission notes the following:
- a) winner takes all: in the healthcare market, this describes the nature of bidding, as typically, one bidder wins the contract. However, in the hospitality market, there is

²³⁰ Frontier Economics Report, paragraph 4.4.

²³¹ Frontier Economics Report, paragraph 4.6.a.

²³² Frontier Economics Report, paragraph 4.6 a.

²³³ Frontier Economics Report, paragraph 4.2 a.

²³⁴ Frontier Economics Report, paragraph 4.6 a and b.



an increasing distribution of contracts amongst multiple suppliers, and it is not necessarily the case that each bidder would win all or none of the contract;

- b) contracts are “lumpy”: it is not the case that each contract is large and infrequent. No single contract, in itself, is large enough to account for a significant part of the healthcare or hospitality market or proportion of the total sales of a supplier. Although there is evidence in both the healthcare and hospitality markets of contracts being rolled over, the possibility of rollover is not known at the time of contract award, and the infrequency of bidding is not deliberate ;
- c) competition begins afresh for each contract: in the healthcare market, experience of previous relevant contracts is an explicit requirement for many customers (particularly public and private hospitals). The outcome of previous tenders therefore can impact on the outcome of other tenders;
- d) market entry is easy: there are significant barriers to new market entry, although switching barriers are low between existing suppliers to healthcare and hospitality customers. Barriers to new market entry to the healthcare market include financial and non-financial barriers, and notably the need for evidence of relevant previous experience.

4.41 The Commission’s view is that, even at this high level, the healthcare and hospitality markets do not conform to the “ideal” bidding market pattern. However, in order to fully consider the operation of competition, the Commission has further examined features associated with bidding markets, in terms of:

- Product homogeneity/differentiation;
- Pricing incentives; and
- Pricing transparency.

Product homogeneity/differentiation

4.42 For the notion of an “ideal” bidding market to hold, the product market should be homogenous, with little or no differentiation between products. In the healthcare and hospitality markets, the requirements of purchasers are complex, involving not only price but a range of contract terms reflecting service quality, service levels etc. While all linen laundries have to meet minimum criteria set out in healthcare customers’ ITTs, bidders compete with each other on numerous quality of service parameters (e.g., service delivery reliability, ability to provide dedicated linen stock, the level of rejected linen items, cleanliness of the facility from a bio contamination control perspective, contingency plans etc.). This is also reflected in ITTs issued by healthcare customers where various criteria are set out, sometimes with costs accounting for 50% or less of the overall marks.²³⁵

²³⁵ See section 12.4 “Award criteria” of the St. James Hospital ITT document. It should also be noted that [...] indicated that price accounted for only 20% of total marks in its 2018 ITT



- 4.43 The fact that some of the healthcare customers interviewed by the Commission²³⁶ awarded contracts to bidders that did not submit the lowest price further indicates that linen laundries do not compete solely on pricing. In the Commission's view, evidence from the markets indicates that firms offer differentiated products, and this does not fit the "ideal" bidding market scenario.

Pricing incentives

- 4.44 In the Commission's view, it is important to consider the strategic interaction between bidders engaged in bidding processes, and particularly their incentives to adopt certain pricing strategies. The notion of first and second ranked bidder is important, but cannot be the only factor considered when looking at competition for a contract, as the ranking will be the result of the terms proposed by the bidders in response to the tenderer's requirement. The bidder will take numerous factors into account, and variation in costs (for example according to capacity issues, location and so on) will feed into the eventual bid price. Each bidder's objective is to win the tender whilst offering the most profitable terms, taking into account that other bidders have the same objective. Thus, when bidders specify the terms of their offer, including the prices they will charge, they need to consider the effect that offering better conditions has on the probability of winning the tender.
- 4.45 Bidders will not typically want to offer a price at which they just break even, but seek to maximise the expected value of the contract, where quoting higher prices makes winning more valuable, but will also imply a lower likelihood of winning. In trading off greater profits from quoting higher prices against the lower probability of winning a tender, bidders will need to form expectations about other bidders – their number, their relative strengths and their likely behaviour. Who is the lowest and who is the second lowest bidder will only be known *ex post*, when the bids have been made and the tenderer has ranked them. There is therefore no meaningful way of identifying a particular firm as systematically being the lowest or the second lowest priced bidder *ex ante* that could be used in any forward-looking assessment of competition in tender processes.
- 4.46 There is no meaningful way of identifying whether a particular firm would be the lowest or the second lowest bidder at the point at which the bidders decide to take part in a tender or determine the terms of their offers. If any particular bidder knew in advance that it would end up in second place (or even further down the ranking), it would either want to improve its offer enough to win or – if it could not profitably do so – not take part in the tender at all.
- 4.47 Economic literature suggests that in a context where there is uncertainty over competing bids, the pricing incentives of competing firms resemble those at work in ordinary markets with differentiated products.²³⁷ For example, if there is uncertainty on

²³⁶ [...]

²³⁷ P. Klemperer (2005), "Bidding Markets", Competition Commission discussion paper, C. Shapiro (2010), "The 2010 Horizontal Merger Guidelines: From Hedgehog to Fox in Forty Years", Antitrust Law Journal, Vol. 77, G. Werden and L. Froeb (2008), "Unilateral Competitive Effects of Horizontal Mergers", in L. Buccirossi (ed.), Handbook of Antitrust Economics, Cambridge, MA, MIT Press, and OFT (2007), "Markets with Bidding Processes", Economics discussion paper, May, all stress the close connection between sealed-bid auctions and pricing of differentiated products. For example, Klemperer states "Note that sealed-bidding corresponds to standard Bertrand price-setting. With perfect information, the sealed-bid process corresponds to Bertrand competition in a market in which all consumers make the same choice between firms. And, as noted above, with imperfect information about rivals' costs or



the required price level of the winning bid, each firm faces a trade-off between increasing the probability of winning the tender by offering a lower price, and the lower margin earned in case of winning from doing so.²³⁸ A higher bid would reduce the probability of winning the tender, but would also increase the margin if the bid were successful.

- 4.48 This trade-off is equivalent to the standard trade-off between quantity sold and price in an ordinary differentiated goods market; the difference being that in the case of a tender it is the probability of winning rather than actual quantities sold that represents the trade-off. Each bidder, therefore, chooses its optimal bid in order to optimise the trade-off between expected sales and price and thereby maximises its expected profits. Pricing incentives and the related incentives to exploit market power in bidding markets are therefore analogous to those at work in standard pricing of differentiated products.
- 4.49 The Commission also refers to the EC Case M.7278 – GE/Alstom²³⁹ where the EC explained that facing more than one rival bidder typically increases the *ex ante* probability that the buyer will prefer a rival offer, and therefore increases the competitive constraint on any given bidder. Thus, it is not only the runner-up – whose identity is not and cannot be known *ex ante* – that represents a competitive constraint on the winning bidder, but the pool of remaining bidders, so that a decrease in the number of potential bidders due to the merger may result in a reduction of the competitive constraint faced by the merged entity.²⁴⁰

Pricing transparency

- 4.50 In most cases, bidders do not know the price that their competitors are bidding. The Commission's investigation indicated that, particularly in the healthcare market,²⁴¹ bidders typically submit bids without observing the bids of their competitors.²⁴² For instance, St James's Hospital's ITT noted the following in respect of previous tender evaluation process:

"The Hospital is utilising the open procedure (OJEU). This is a one stage process whereby;

about the bid-taker's preferences, bidders making sealed bids face a trade-off between the price and their expected sales that is similar to the price-quantity trade-off firms face in standard differentiated products Bertrand competition" (page 14). Similarly, Froeb and Werden state that *"the contrast between the effects of mergers in Bertrand industries and their effects in auctions is greater the more bidders know about customer-specific competitive conditions, and that contrast may be nil in sealed-bid auctions"* (page 28). See footnote 241 for definition of sealed bid auction.

²³⁸ DotEcon Report, slides 5 and 6, 6, using a simple stylised model of bidding to illustrate this point. For the avoidance of doubt, the Commission does not consider that this model describes the reality of how bidding in the relevant markets works, but that it highlights the fundamental considerations that affect the pricing decisions of players in such markets.

²³⁹ The EC's decision in [Case M.7278 – GE/Alstom \(2015\)](#), Annex I - The Commission's Economic Analysis of Bidding Data, recitals 7 et seq.

²⁴⁰ This is the 'participation effect'. See for example DotEcon for the OFT, 'Markets with Bidding Processes', 2007.

²⁴¹ This is not always the case in the hospitality market, where the Commission has seen instances of competitors being asked to match prices.

²⁴² This type of bidding process is known in economic literature as **"first price" sealed bid auction**. In contrast, **"second price" sealed bid auctions** typically refer to a category of auctions wherein some mechanism in the auction means that the price of the winning bid is determined by the level of the second-best bid. Second-price mechanisms, which are strategically similar to open bidding processes, are easy to implement where the only dimension that matters is price, but not where the offers made by bidders have multiple dimensions.



The CA [Contracting Authority] invites Tenderer(s) to outline their proposal(s) for the Provision of Laundry, Linen and Miscellaneous Services. Evaluation will be undertaken by the LLMS Steering Group nominated by the CA having regard to the final award criteria set out in this ITT.....

*The CA may, at its discretion, request meetings with individual Tenderer(s) during the evaluation period for the purposes of clarifying any aspect of the Tenderer(s) proposal. If appropriate or relevant, members of the Steering Group may be present and actively participate at such meetings. Such meetings will be strictly confidential and **will not result in any material change to the original tender. No discussions regarding the progress of the evaluation or the Tenderer(s) performance will be entered into.** All such meetings will be held at the convenience of the CA and the CA will not be responsible for any costs incurred by the Tenderer(s) (however incurred.)²⁴³ (emphasis added).*

Conclusion

- 4.51 The Commission has set out its reasoning above as to why the healthcare and hospitality markets are not amenable to an idealised bidding market analysis. Therefore, market share analysis in the healthcare and hospitality markets is relevant. This significantly contributes to an understanding of: (i) the evolution of different linen laundries' market position; (ii) the market strength of different linen laundries; and (iii) the market dynamics.
- 4.52 The Commission has established that the healthcare and hospitality markets do not exhibit the features of an "ideal" bidding market, where two rivals may be sufficient to produce a competitive outcome.²⁴⁴ Evidence from the healthcare and hospitality markets is not consistent with the parties' view of bidding markets, where competition concerns around a 3-to-2 merger can be suspended in a belief that even two competitors will provide a good competitive outcome. The Commission's view is that there is a direct impact on the level of competitive constraints faced by linen laundries (particularly in the healthcare market) of the number of competitors, especially because that number is already very small, and Post Transaction would be reduced still further.

Competitive Assessment

- 4.53 Having set out its counterfactual, and its overall approach to considering the nature of competition in both markets, the Commission now assesses the impact of the Proposed Transaction on each of the hospitality and healthcare markets in turn.

The hospitality market

The nature of pre-merger competition

- 4.54 In their written and oral submissions, the Parties described the hospitality market as a bidding market, exhibiting the same general characteristics as the healthcare market.²⁴⁵

²⁴³ See section 6.15 "Evaluation Process" of the St. James Hospital ITT document.

²⁴⁴ Note that closeness of competition is considered in the analysis of unilateral effects.

²⁴⁵ Frontier Economics Report, paragraph 4.4.



As context for discussion below, the Commission refers back to the discussion of the Parties' view of bidding markets and the Commission's assessment of these views set out in paragraphs 4.39 to 4.50.

4.55 This section sets out the Commission's analysis of the hospitality market as follows:

- market structure;
- market concentration; and
- competitive effects analysis.

Market Structure

Views of the Parties

4.56 The Parties submitted that the Commission exaggerated the role of Berendsen in the hospitality market and misjudged the closeness of competition between the Parties. In the Parties' view, the Commission has *"..not produced any credible evidence to support the view that Berendsen will continue to be a viable option for hospitality customers"*.²⁴⁶

4.57 The Parties argued that market shares are of limited relevance, because price negotiations are bilateral in the hospitality market.²⁴⁷

4.58 The Parties also submitted that the Commission *"..disregarded the competitive constraint posed by numerous viable competitors based on their geographic coverage"*.²⁴⁸

4.59 Finally, the Parties argued that the Commission overstated the significance of multi-site customers and understated the extent to which competitors currently serve multi-site customers. Furthermore, the Parties disagreed with the Commission's preliminary view set out in the Assessment that only the Parties and Celtic Linen are credible suppliers of flat linen rental and maintenance services to multi-site customers seeking a single supplier.²⁴⁹

4.60 These points are addressed in paragraphs 4.61 to 4.76 below.

Views of the Commission

4.61 The Commission has set out its assessment of the nature of bidding markets in paragraphs 4.39 to 4.50 above. Based on this assessment, the Commission is of the view that it is relevant to consider market shares (and the evolution of market shares) when considering the structure of the hospitality market.

4.62 According to the Parties' estimates, on a national level, the Parties' combined market share in terms of revenue from the provision of outsourced flat linen rental and maintenance services to hospitality customers (having regard to the market definition

²⁴⁶ Parties' Response, paragraph 4.3.5.

²⁴⁷ Parties' Response, paragraph 4.3.4.

²⁴⁸ Parties' Response, paragraphs 4.3.34 to 4.3.36.

²⁴⁹ Parties' Response, paragraphs 4.3.50 to 4.3.64.



adopted by the Commission) was [40-50]% with an increment²⁵⁰ of [30-40]% as a result of the Proposed Transaction.

4.63 Table 2 below illustrates the Parties' estimated shares in the hospitality market in the period from 1 January 2017 to 31 December 2017.

Table 2: Revenue from the provision of flat linen rental and maintenance services to hospitality customers in the State, 2017 (the parties' estimates)²⁵¹ [REDACTED]

	2017	
	€m	%
Berendsen	[...]	[0-10]
Kings Laundry	[...]	[30-40]
Combined	[...]	[40-50]
Increase		[30-40]
Celtic Linen	[...]	[10-20]
Linencare	[...]	[0-10]
OCL	[...]	[0-10]
Premier Linen	[...]	[0-10]
Other²⁵²	[...]	[10-20]
Total	[...]	100

Source: Information submitted by the Parties. Percentages may not add up due to rounding.

4.64 The Commission conducted a market share reconstruction and collected the actual sales volumes of all the main competitors in the State for the period from 1 January 2014 to 30 June 2018 which is illustrated by Table 3 below. On the basis of the Parties' and their main competitors' sales volume data, in the period from 1 January 2018 to 30 June 2018, the combined market share of the parties is [50-60]%, with an increment of [40-50]%. This combined market share is higher than the Parties' estimate of a combined market share of [40-50]%²⁵³.

²⁵⁰ For the purposes of this Phase 2 Determination, increment refers to incremental market share acquired by Berendsen

²⁵¹ The Parties included potential revenue from customers currently operating OPLs. The inclusion of the potential revenue reduces the Parties' combined market share from [40-50]% to [40-50]%. Such potential revenue is not presented in Table 2 having regard to the relevant product market definition.

²⁵² This group includes [...] and a range of other providers. See page 15 of the merger notification.

²⁵³ For a more direct comparison, in the period from 1 January 2017 to 31 December 2017, the Parties' combined market share was [50-60]%.

Table 3: Revenue from the provision of outsourced flat linen rental and maintenance services to hospitality customers in the State, 2014 - 30 June 2018 [REDACTED]

	2014		2015		2016		2017		H1 2018	
	€000s	%	€000s	%	€000s	%	€000s	%	€000s	%
Berendsen	[...]	[10-20]	[...]	[10-20]	[...]	[0-10]	[...]	[0-10]	[...]	[0-10]
Kings Laundry	[...]	[20-30]	[...]	[30-40]	[...]	[30-40]	[...] ²⁵⁴	[40-50]	[...]	[40-50]
Combined	[...]	[40-50]	[...]	[40-50]	[...]	[40-50]	[...]	[50-60]	[...]	[50-60]
Increment								[40-50]		[40-50]
Celtic Linen ²⁵⁵	[...]	[20-30]	[...]	[20-30]	[...]	[10-20]	[...]	[10-20]	[...]	[10-20]
OCL	[...]	[0-10]	[...]	[0-10]	[...]	[0-10]	[...]	[0-10]	[...]	[10-20]
Linencare	[...]	[0-10]	[...]	[0-10]	[...]	[0-10]	[...]	[0-10]	[...]	[0-10]
Premier Linen	[...]	[0-10]	[...]	[0-10]	[...]	[0-10]	[...]	[0-10]	[...]	[0-10]
Other ²⁵⁶	[...]	[10-20]	[...]	[10-20]	[...]	[10-20]	[...]	[10-20]	[...]	[0-10]
Total	[...]	100	[...]	100	[...]	100	[...]	100	[...]	100

Source: The Commission's analysis using information provided by the Parties and the Competitors.

4.65 Table 3 illustrates that Kings Laundry is the clear leader in the hospitality market with a [40-50]% market share at the end of June 2018. Kings Laundry's market share has grown very rapidly since 2014 (from [20-30]% in 2014 to [40-50]% in the first half of 2018) and it was bolstered by the acquisition of CWS-boco's hospitality customers in 2017. Berendsen's market share in this sector has been gradually declining and it had a market share of [0-10]% at the end of June 2018, down from a [10-20]% market share in 2014. Notably, Kings Laundry seems to have been increasing its share at the expense of both Berendsen and Celtic Linen.

4.66 The Parties are facing several competitors in the hospitality market with Celtic Linen ([10-20]% market share), OCL ([10-20]% market share), Linencare ([0-10]% market share) and Premier Linen ([0-10]%) being their largest competitors (in terms of market share) at the end of June 2018. Celtic Linen's market share declined significantly since 2014, but has increased in H1 2018, [...] by the acquisition of Millbrook Linen. [...] and [...] have been steadily increasing their market shares, while smaller competitors'

²⁵⁴ Kings Laundry noted that its turnover for 2017 provided in the Merger Notification Form was an approximate figure and its turnover provided in response to Question 11 of the First RFI provides an accurate figure. Thus, Table 3 reflects the most accurate turnover figures. See page 3 of Kings Laundry's response to the Commission's queries dated 16 November 2018.

²⁵⁵ Celtic Linen's revenue in H1 2018 includes revenue from customers of Millbrook Linen Limited ("Millbrook Linen"), which Celtic Linen acquired in February 2018.

²⁵⁶ This group includes revenue of [...].



(classified as 'other') combined market share declined from [10-20]% of the hospitality market in 2014 to [0-10]% in H1 2018.

4.67 The Commission also notes that there has been significant market consolidation in recent years:

- a) in February 2017, Kings Laundry acquired CWS-boco's hospitality sector customers;²⁵⁷ and
- b) in February 2018, Celtic Linen acquired Millbrook Linen²⁵⁸ - a linen laundry that catered for hospitality customers.

4.68 While the Commission examined the effects of the Proposed Transaction on the structure of the market on the basis of a state-wide geographical scope (see Chapter 3 above), it is relevant to note that there are differences in competitive conditions across regions in the State.

4.69 The Commission's investigation reveals that there are three linen laundries that are currently supplying flat linen rental and maintenance services to hospitality customers on a national basis (the Parties and Celtic Linen).²⁵⁹ The Commission notes that while the majority of [...] turnover is in [...], it is expanding its activities in [...] and as such is attempting to become a nationwide service provider. Other linen laundries are currently providing outsourced flat linen rental and maintenance services on a regional basis as summarised below:

- a) [...];
- b) [...];
- c) [...];
- d) [...]; and
- e) [...].

4.70 Table 4 sets out linen laundries' market shares on a regional basis. It demonstrates that all linen laundries (apart from [...]) provide outsourced flat linen rental and maintenance services in Leinster. The Parties' combined market share in Leinster (region where approximately [50-60]% of total turnover in the hospitality market is generated) is [50-60]% with an increment of [40-50]%. In comparison, there are only five linen laundries providing flat linen rental and maintenance services in Munster (region where approximately [20-30]% of total turnover in the hospitality market is generated) and the parties' combined market share in this region is [70-80]% with an increment of [50-60]%.

²⁵⁷ See CWS-boco's [public announcement](#).

²⁵⁸ See Celtic Linen's [public announcement](#).

²⁵⁹ In this regard, Table 7 below sets out each linen laundries' turnover broken down by region where this turnover was generated.



Table 4: Revenue from the provision of outsourced flat linen rental and maintenance services in the hospitality market by region, 2017²⁶⁰ [REDACTED]

	Leinster	Munster	Connacht	Ulster ²⁶¹
Linen laundry	%	%	%	%
Berendsen	[0-10]	[10-20]	[0-10]	[0-10]
Kings Laundry	[40-50]	[50-60]	[30-40]	[0-10]
Combined	[50-60]	[70-80]	[40-50]	[0-10]
Increment	[40-50]	[50-60]	[30-40]	[0-10]
Celtic Linen	[10-20]	[10-20]	[10-20]	[0-10]
OCL	[0-10]	[0-10]	[40-50]	[0-10]
Linencare ²⁶²	[10-20]	[0-10]	[0-10]	[20-30]
Premier Linen	[10-20]	[0-10]	[0-10]	[0-10]
Lilliput	[0-10]	[0-10]	[0-10]	[50-60]
Carraig Linen	[0-10]	[0-10]	[0-10]	[0-10]
Ashton Linen	[0-10]	[0-10]	[0-10]	[0-10]
Millbrook Linen	[10-20]	[0-10]	[0-10]	[0-10]
Total revenue (€000's)	[...]	[...]	[...]	[...]

Source: The Commission's analysis using information provided by the Parties and the Competitors.

- 4.71 Thus, market share variations on a regional basis are relatively high. The Commission also notes that some linen laundries are likely to subcontract work won in a region where they are not currently present. For example, [...] informed the Commission that it would likely subcontract outsourced flat linen rental and maintenance services in the Munster area to one of its competitors if it won a contract with a multi-site customer with a site in Munster.²⁶³
- 4.72 The Commission's view is that the regional variation in market shares does not reflect a constraint on linen laundries, but rather reflects the fact that linen laundries tend to be stronger in areas closer to their facilities. The available evidence indicates that linen laundries with intentions to expand (e.g., [...]) can and do supply customers throughout the State from a single facility.
- 4.73 The Commission has considered the Parties' views that their supply to multi-site customers is not significant and that weight should be given to the extent to which multi-site customers choose to use multiple flat linen suppliers. The Commission understands that some multi-site hospitality customers may choose to use a single national supplier, but that several multi-site customers (e.g., Dalata Hotel group) use multiple suppliers. In addition, the Commission notes that [...] and [...] have recently

²⁶⁰ Turnover of [...] is not included in this analysis, as they are no longer competing actively in the hospitality market.

²⁶¹ Turnover generated in Ulster includes turnover generated in Northern Ireland, as some Competitors were unable to separate turnover figures for Ulster counties in the State.

²⁶² Linencare indicated the counties where it provides outsourced flat linen rental and maintenance services, but did not provide turnover breakdown by region. Thus, the Commission made assumptions on Linencare's regional breakdown of turnover based on the regional breakdown of turnover of other linen laundries operating in Leinster in the hospitality market.

²⁶³ Please see phone call record with [...] dated 19 February 2019.



decided to diversify their purchase of outsourced flat linen rental and maintenance services by giving business to [...].²⁶⁴

- 4.74 In summary, the Commission notes that currently Kings Laundry is the sole supplier to [...] multi-site customers. Only one other linen laundry (i.e., Lilliput) is the sole supplier to any hotel group. However, the Commission recognises that linen laundries can and do subcontract to cover areas where it may be less economic for them to supply directly and that this reduces any requirement for a national presence.

Conclusion on Market Structure

- 4.75 The Commission is of the view that market shares are relevant for an understanding of the hospitality market structure and market dynamics. The Commission's investigation revealed that following the implementation of the Proposed Transaction, the merged entity will enjoy a very strong position in the hospitality market with a market share of over [50-60]%. The Commission has taken into account the EC's Horizontal Merger Guidelines regarding the relationship between high market shares and market power.²⁶⁵
- 4.76 The Commission notes Berendsen's declining market share in the hospitality market and notes the Parties' view that "[...]".²⁶⁶ The Commission recognises the fact that the merged entity's high market share is largely accounted for by Kings Laundry's growth. The Commission notes also that some linen laundries have increased their market share over the last 5 years.

Market Concentration

- 4.77 Based on the market share estimates set out in Table 3 above, the Commission is of the view that the hospitality market is highly concentrated.²⁶⁷ Table 5 illustrates that the HHI (see paragraph 4.223 for the description of HHI) following implementation of the Proposed Transaction would be over 3,000.²⁶⁸ Furthermore, the change in the HHI would be approximately 609. As set out in paragraph 3.10 of the Commission's Merger Guidelines, means that the Commission could not conclude at the end of the Phase 1 Determination that the Proposed Transaction was unlikely to raise competition concerns in the hospitality market and thus, had to intensify its analysis of the likely competitive impact of the Proposed Transaction in this market.

Table 5: The HHI in the hospitality market, H1 2018

	H1 2018
HHI pre-Transaction	2,674
HHI post-Transaction	3,283

²⁶⁴ See the Commission's meeting minutes with [...].

²⁶⁵ See paragraph 4.215 below.

²⁶⁶ Parties' Response, paragraph 4.3.7.

²⁶⁷ Market shares of individual competitors combined under *Other* category in Table 12 above were taken into account individually in order to calculate a more accurate estimate of the HHI.

²⁶⁸ The Commission notes that the Proposed Transaction leads to an even greater concentration of an already highly concentrated market.



	H1 2018
HHI delta	609

Source: The Commission's analysis using information provided by the Parties and the Competitors.

Competitive Effects Analysis

- 4.78 In paragraphs 4.79 to 4.208 below, the Commission sets out its assessment of other factors, including closeness of competition between the merging parties, before reaching a conclusion as to whether the Proposed Transaction would be likely to lead to an SLC in the hospitality market.

Views of the Parties

Pre-merger competitive pressure

- 4.79 The Parties submitted that they faced competition from a large number of competitors across a broad range of product/service offerings listed in paragraph 1.4 above. In this regard, the Parties state that their activities overlap only with respect to flat linen rental and maintenance services.²⁶⁹
- 4.80 The Parties argued that their activities are largely complementary. The Parties stated that Berendsen focuses on the supply of workwear rental and maintenance services and, to a lesser extent, the supply of flat linen rental and maintenance services to healthcare customers while Kings Laundry focuses on the supply of flat linen rental and maintenance services to hospitality customers. In support of this argument, the Parties referred to their revenue in each customer sector. The Parties claimed that the complementarity between the Parties' activities means that, following the implementation of the Proposed Transaction, the merged entity *"...will be able to serve a broader range of customers and to a higher standard across the board."*²⁷⁰

Closeness of competition

The Parties' pre-merger documents

- 4.81 Berendsen's internal documents show that [...] in the hospitality market. In particular the Commission notes the following references:

*"[...]"*²⁷¹

*"[...]"*²⁷²

²⁶⁹ See pages 23 to 24 of the Merger Notification Form.

²⁷⁰ Page 24 of the Merger Notification Form.

²⁷¹ Page 1 of the of the Document titled [...] dated 11 October 2016 provided by Berendsen in response to question 9 of the First RFI. During the Commission's meeting with Berendsen on 30 January 2019, Berendsen confirmed that [...].

²⁷² Page 4 of the of the Document titled [...] dated 11 October 2016 provided by Berendsen in response to question 9 of the First RFI. During the Commission's meeting with Berendsen on 30 January 2019, Berendsen confirmed that [...].



“[...]”²⁷³

The Parties’ written and oral submissions

- 4.82 The Parties expressed a view that Berendsen is [...] in the hospitality market²⁷⁴ and that the Parties are not close competitors as evidenced from tender participation analysis.²⁷⁵ In this regard, the Parties argued that the relevant measure of the closeness of competition between the Parties is the probability that, for the contracts one of the merging parties’ bids for and wins, the other merging party is the customer’s second choice bidder.²⁷⁶
- 4.83 The Parties claimed that customer loss data demonstrates that Berendsen does not exercise any competitive constraint on Kings Laundry. During the relevant time period [...] of the customers lost by Kings Laundry was lost to Berendsen. In the Parties’ view, while Berendsen lost [...] % of its hospitality customers to Kings Laundry between January 2014 and June 2018, this does not prove a direct measure of diversion. According to the Parties, for there to be any material loss of competition, whenever Berendsen lost to Kings Laundry, it would need to be established that Berendsen was the second choice bidder for that customer.²⁷⁷

Constraints from competitors

- 4.84 The Parties submitted that the merged entity will face significant competition following the implementation of the Proposed Transaction. In this regard, the Parties referred to existing competitors and in particular, Celtic Linen, Linencare, OCL and Premier Linen that are larger than or the same size as Berendsen.²⁷⁸ The Parties also considered wash-only laundrettes to pose a significant competitive constraint on them.²⁷⁹ The Parties were of the view that, in its Assessment, the Commission downplayed the competitive constraint that Celtic Linen will exercise in the hospitality market post-merger.²⁸⁰
- 4.85 For an overview of the Parties’ Report on Celtic Linen, see paragraph 4.239 below. In addition to the information outlined in paragraph 4.239, the Parties noted that Kings Laundry bid for and lost [...] hospitality contracts²⁸¹ to Celtic Linen since January 2017.²⁸² Separately, the Parties referred to Celtic Linen’s recent win of the Center Parcs contract and considered that this increases Celtic Linen’s competitive strength. The Parties noted that the contract for Center Parcs in Longford Forest, which accommodates up to 2,500 guests, is one of the largest hospitality contracts in the State.²⁸³
- 4.86 The Parties also argued that, in its Assessment, the Commission erred in its evaluation of the merged entity’s incentive to increase price in the hospitality market by

²⁷³ Page 1 of the of the Document titled [...] dated 11 October 2016 provided by Berendsen in response to question 9 of the First RFI.

²⁷⁴ Parties’ Response, paragraphs 4.3.7 to 4.3.8.

²⁷⁵ Parties’ Response, paragraphs 4.8 to 4.24 and Frontier Economics Report, paragraph 4.2.c.

²⁷⁶ Frontier Economics Report, paragraph 4.6.b.

²⁷⁷ Frontier Economics Report, paragraphs 4.19 c to 4.22.

²⁷⁸ Page 22 of the Merger Notification Form.

²⁷⁹ Page 19 of the Merger Notification Form.

²⁸⁰ Parties’ Response, paragraphs 4.3.24 to 4.3.33.

²⁸¹ These [...] hospitality contracts are as follows: [...].

²⁸² Paragraph 33 in the Report on Celtic Linen.

²⁸³ Paragraph 32 in the Report on Celtic Linen.



“incorrectly estimating the price differential and mistakenly assuming the mere existence of a price differential is proof of incentive to increase price”²⁸⁴ and that it failed to demonstrate that Celtic Linen would have both the incentive and the ability to follow an increase in price by the merged entity.

Likelihood of new entry

- 4.87 The Parties submitted in the Merger Notification Form that they face a credible threat of entry in the hospitality market.²⁸⁵ The Parties referred specifically to wash-only laundrettes and noted that these laundrettes pose a credible threat of entry into the hospitality market by expanding their current operations. The Parties referred to Kings Laundry, Linencare and Carraig Linen and noted that these operators originally operated as wash-only laundrettes and have subsequently expanded into the supply of outsourced flat linen rental and maintenance services to hospitality customers in the State.
- 4.88 During a meeting with the Commission, Berendsen provided its views on the importance of experience and reputation in the supply of outsourced flat linen rental and maintenance services to hospitality customers in the State. Berendsen considered experience and brand reputation to be an important factor in this sector, yet noted that its importance can be superseded with a better price offer. In addition, Berendsen expressed its view that it is relatively straightforward to enter and grow in the supply of outsourced flat linen rental and maintenance services to hospitality customers in the State. In this regard, Berendsen referenced Carraig Linen and noted that it was set up by a former employee of Berendsen. Furthermore, Berendsen was of the opinion that while reputation does matter, reputation can be achieved relatively quickly.
- 4.89 In addition, Berendsen provided the Commission with a list of potential competitors that Berendsen considered may enter the hospitality market in the next 2 to 3 years, including Johnsons Services Group; K-Bro Linen Inc.; CLEAN Limited; CWS-boco; Lindstrom; Shortridge Limited; The Brilliant Laundry Group Limited; Bardusch; AlSCO Inc.; Salesianer; and Cintas Corporation.²⁸⁶ Berendsen noted that such entry could occur through either the acquisition of an existing business or greenfield entry as, in Berendsen’s view, both options represent viable opportunities for entry.²⁸⁷ However, Berendsen did not provide any supporting documents or evidence in relation to the timeliness, likelihood or sufficiency of entry by any of those listed potential competitors.
- 4.90 Kings Laundry informed the Commission that it is not currently aware of any potential new entrant in the supply of flat linen rental and maintenance services to hospitality customers in the State.²⁸⁸ However, Kings Laundry opined that entry is more likely in the supply of outsourced flat linen rental and maintenance services to hospitality customers than to healthcare customers in the State.²⁸⁹
- 4.91 In the Parties’ view, there are numerous viable competitors in the hospitality market and several competitors pose more significant competitive constraints on Kings Laundry

²⁸⁴ Paragraphs 4.3.14 to 4.3.15 of the Parties’ Response and paragraphs 4.2.d, and 4.25 to 4.42 of the Frontier Economics Report.

²⁸⁵ See section 5.3 of the Merger Notification Form.

²⁸⁶ See Berendsen’s response to question 22 of the Second RFI.

²⁸⁷ See Berendsen’s response to question 22 of the Second RFI.

²⁸⁸ See Kings Laundry’s response to question 19 of the Second RFI.

²⁸⁹ See Kings Laundry’s response to question 19 of the Second RFI.

than Berendsen does. The Parties argued that these competitors have varying degrees of spare capacity, and should be considered as a competitive constraint.²⁹⁰

- 4.92 The Parties submitted that competing linen laundries (specifically OCL) are not geographically limited. Furthermore, the Parties noted that facility location was not perceived to be an important factor by Amárach Survey respondents, Customers and Competitors.²⁹¹ The Parties argued that the available evidence indicates that one facility is sufficient for a linen laundry to provide outsourced flat linen rental and maintenance services on a national basis.²⁹²
- 4.93 The Parties argued that the Commission was wrong to assume that Kings Laundry's competitive strategy will change post-merger. According to the Parties, there were particular reasons why Elis increased prices in the UK and in Brazil following the acquisition of organisations providing outsourced flat linen rental and maintenance services. The Parties noted that Kings Laundry's cost advantage and spare capacity will remain post-merger.²⁹³
- 4.94 The Parties argued that the Commission ignored and/or failed to give sufficient weight to views expressed by hospitality customers and competitors. The Parties argued that third parties do not have concerns regarding the Proposed Transaction.²⁹⁴

Countervailing Buyer Power

- 4.95 The Parties considered that customers in the hospitality sector are sophisticated, price sensitive and service level conscious.²⁹⁵ Thus, in the Parties' view, these customers can credibly avail of the following options in response to any attempt by the merged entity to increase prices:
- a) switch to alternative suppliers of flat linen rental and maintenance services;
 - b) switch to self-supply by setting up OPLs; or
 - c) purchase linen items, and outsource maintenance to wash-only launderettes.
- 4.96 The Parties considered that exercising switching options is relatively easy, as, in their view, barriers to switching are relatively low. The Parties referred to the relatively [...] of their contracts with customers²⁹⁶ and argued that the costs of switching suppliers at the end of the contract period are low.
- 4.97 In the Report on OPLs, the Parties noted the precedent of NCAs (including the Commission) considering the option of self-supply during the assessment of competition.²⁹⁷ The Parties noted that a number of customers in the hospitality sector

²⁹⁰ Parties' Response, paragraphs 4.3.34 to 4.3.36.

²⁹¹ Parties' Response, paragraphs 4.3.41 to 4.3.43.

²⁹² Parties' Response, paragraphs 4.3.44 to 4.3.49.

²⁹³ Parties' Response, paragraphs 4.3.19 to 4.3.23.

²⁹⁴ Paragraphs 4.3.83 to 4.3.88 of the Parties' Response and paragraphs 1.3.e, 4.3, 7.4 and 7.5 of the Frontier Economics Report.

²⁹⁵ Page 25 of the Merger Notification Form.

²⁹⁶ The Parties also noted that [...] of their hospitality customers do not have contracts with them. In instances where contracts exist, the Parties noted that the duration of these contracts is typically between [...]. See page 12 of the Merger Notification Form.

²⁹⁷ Paragraphs 4 to 9 of the Report on OPLs.



(e.g., B&Bs) currently operate OPLs.²⁹⁸ Similarly, the Parties reiterated that several hotels opted to switch to self-supply in the past.²⁹⁹ In relation to customers that do not have OPLs, the Parties reiterated that the costs associated with setting up an OPL are relatively small.³⁰⁰ The Parties noted that customers can avail of second hand machinery, citing providers and purchasers of such machinery in the State.³⁰¹ The possibility to source equipment from suppliers located outside the State was also highlighted.³⁰² Thus, the Parties were of the view that customers in the hospitality sector that are outsourcing flat linen rental and maintenance services can exercise significant CBP by threatening to switch to self-supply.

- 4.98 Finally, according to the Parties, hospitality customers' CBP is driven by consolidation in the hotel industry; the strategy of maintaining a diverse flat linen supplier base; and the potential to switch to OPL. The Parties noted the difficulties faced by linen laundries in attempting to impose a price increase and argued that the existence of rebates demonstrates the existence of CBP.³⁰³

Views of third parties

Hospitality Competitors

- 4.99 The Commission notes that when responding to the Commission's query regarding the competitive effects of the Proposed Transaction, Competitors did not segment their response in respect of the healthcare market and the hospitality market. As such, the views of those which currently supply flat linen rental and maintenance services to healthcare customers in the State (i.e., [...]) as well as to hospitality customers - summarised in paragraph 4.255 above - are also summarised below.
- 4.100 Seven out of the nine Competitors³⁰⁴ contacted by the Commission which currently provide flat linen rental and maintenance services to hospitality customers in the State responded to this question in the First Competitor Questionnaire.³⁰⁵
- 4.101 Two³⁰⁶ out of seven Competitors that provided views on this query indicated that the Proposed Transaction would result in a price increase, yet claimed that this price increase is "*much needed*"³⁰⁷ as "*prices are currently slightly lower than what they should be anyway*"³⁰⁸. One³⁰⁹ Competitor noted that the Proposed Transaction would

²⁹⁸ Paragraph 15 of the Report on OPLs.

²⁹⁹ Paragraph 31 of the Report on OPLs.

³⁰⁰ Paragraph 16 of the Report on OPLs.

³⁰¹ Paragraphs 33 to 34 of the Report on OPLs.

³⁰² Paragraph 35 of the Report on OPLs.

³⁰³ Parties' Response, paragraphs 4.3.65 to 4.3.75.

³⁰⁴ These 9 Competitors are as follows: [...]. The 7 competitors which responded to this query are as following: [...]. For completeness, the Commission notes that it also contacted [...] however, as previously mentioned, these parties are not currently active in the supply of Flat Linen Rental and Maintenance Services to hospitality customers in the State. While [...] did not provide views on the competitive effects of the Proposed Transaction, [...] did. For more information, please see [...] response to the First Competitor Questionnaire.

³⁰⁵ The Commission notes that such competitors provided a response in respect of the competitive effects of the Proposed Transaction in relation to the supply of outsourced flat linen rental and maintenance services in the State and did not segment their answer in respect of healthcare and hospitality. Please see paragraph 4.255 below for the [...] response to this query.

³⁰⁶ Please see [...] response to the First Competitor Questionnaire and [...] response to question 29 of the First Competitor Questionnaire.

³⁰⁷ See [...] response to question 29 of the First Competitor Questionnaire.

³⁰⁸ See [...] response to the First Competitor Questionnaire.

³⁰⁹ See [...] response to question 29 of the First Competitor Questionnaire.



have no impact on either their own business or customers of Berendsen and Kings Laundry. Another Competitor noted that they “*don’t believe the market will be affected*” in respect of the Proposed Transaction citing the fact that Kings Laundry mainly serves the hospitality sector and that Berendsen mainly serves the healthcare sector and workwear.³¹⁰ One Competitor noted that the impact of the Proposed Transaction on customers would be positive and noted that the “*resultant synergies should benefit the customer*”.³¹¹ One Competitor noted that the Proposed Transaction would reduce competition and choice for customers.³¹² Finally, the remaining Competitor which provided views on this issue noted that the impact of the Proposed Transaction was unforeseeable.³¹³

Customers and Self-suppliers in the hospitality sector

- 4.102 A number of Customers from the hospitality sector that responded to the Questionnaire to Customers provided views on the parties’ closest competitors and the impact of the Proposed Transaction in the hospitality market.³¹⁴
- 4.103 In relation to closeness of competition, Celtic Linen was consistently identified as the closest competitor to the Parties with all five Customers who responded in relation to this question identifying Celtic Linen as the Parties’ main competitor. OCL, and to a lesser extent CWS-boco and Sovereign Linen, were also mentioned.
- 4.104 In relation to the impact of the Proposed Transaction, on their ability to purchase their linen services, Customers from the hospitality sector expressed less of a concern than those in healthcare, with some saying it would have no impact and others saying it could be a negative or positive impact.³¹⁵
- 4.105 In relation to the question of the impact of the Proposed Transaction on the price of outsourced flat linen rental and maintenance services, of the three hospitality Customers who responded, two said that they would expect prices to increase and one said that they would expect no change.³¹⁶
- 4.106 Three Self-suppliers from the hospitality sector that expressed views on the impact of the Proposed Transaction were of the view that the Transaction will have no impact in the hospitality market.³¹⁷ One Self-supplier from the hospitality sector did not have strong views, but noted that the reduced number of competitors could lead to an increase in prices in the hospitality market.³¹⁸
- 4.107 The Amárach Survey indicated that nearly two thirds (64%) of respondents from the hospitality sector indicated they thought that the Proposed Transaction would have a

³¹⁰ See [...] response to question 29 of the First Competitor Questionnaire.

³¹¹ See [...] response to question 29 and 30 of the First Competitor Questionnaire.

³¹² See [...] response to question 29 and 30 of the First Competitor Questionnaire.

³¹³ See [...] response to question 30 of the First Competitor Questionnaire.

³¹⁴ See paragraphs 10.29 to 10.30 below.

³¹⁵ See paragraphs 10.31 to 10.33 below.

³¹⁶ See paragraphs 10.34 to 10.35 below.

³¹⁷ See paragraphs 10.43 to 10.44 below.

³¹⁸ See the Commission’s phone call record with [...] dated 24 January 2019.



neutral impact, with 16% saying a positive impact and 9% saying it would have a negative impact.³¹⁹

Views of the Commission

4.108 The Commission focused on two likely theories of harm as part of its assessment of the likely competitive impact of the Proposed Transaction in the hospitality market: (i) unilateral effects; and (ii) coordinated effects. The impact of coordinated effects is discussed in 4.379 to 4.386 below.

Unilateral Effects

4.109 In considering the likelihood of unilateral effects occurring following implementation of the Proposed Transaction, the Commission has considered the factors identified in the Commission's Merger Guidelines as outlined in paragraph 4.27 and assesses a number of factors:

- a) competitive pressure exerted by Kings Laundry on Berendsen (and other competitors) before the Proposed Transaction (discussed in paragraphs 4.110 to 4.119 below);
- b) closeness of competition between the Parties (discussed in paragraphs 4.120 to 4.148 below)
- c) constraints from remaining competitors of the Parties (discussed in paragraphs 4.149 to 4.186 below);
- d) likelihood of new entry (discussed in paragraphs 4.187 to 4.195 below); and
- e) countervailing buyer power (discussed in paragraphs 4.196 to 4.208 below).

Pre-merger competitive pressure exerted by Kings Laundry on Berendsen

4.110 Since Kings Laundry commenced operating as a provider of outsourced flat linen rental and maintenance services, it has been competing vigorously in order to grow its customer base in the hospitality sector. As noted in paragraph 4.65 above, Kings Laundry's market share has grown very rapidly since 2014 and it currently provides services to major hotel groups in the State including [...] ³²⁰. Furthermore, a significant portion of Kings Laundry's largest hospitality customers (in terms of turnover) was gained at the expense of both Berendsen and [...] ³²¹.

4.111 Kings Laundry's competitive strategy in the hospitality sector appears to be focussed on providing high quality service at relatively low prices. In paragraph 4.266 below, the Commission refers to Kings Laundry's dedicated linen system which Kings Laundry uses

³¹⁹ See slide 59 of the Amárach Survey.

³²⁰ Also see Table 8 below.

³²¹ See paragraph 4.65 above.



to differentiate itself from its competitors. Kings Laundry notes that it is [...] ³²² [...]. Nevertheless, Kings Laundry considers that [...]. ³²³

- 4.112 Kings Laundry publicly promotes itself as an important competitor and an innovative player in the hospitality market. For example, in an article published in “Hotel & Catering Review” magazine issued in February 2016 ³²⁴ Kings Laundry stated the following:

“We reduced our costs during the recession”;

“We took a very old system, modernised it, and put it into our plant in Dublin. We set it up and dedicated it to specific hotels. We introduced our dedicated linen rental service in Tallaght in 2008 and growth in demand for our services has really taken off since then – and it has reduced the average price of laundry by 20% over the last seven years. With the dedicated system, the customer is kept fully stocked”; and

“So our competitors are suffering badly because our product selection, distribution systems and customer focus provides a level of service that other commercial laundries can’t match”.

- 4.113 Kings Laundry confirmed that it was expanding during the recession at the time when other linen laundries were losing revenue, but noted that the aforementioned article should be read in a context where Kings Laundry was [...]. ³²⁵ The Commission considers that Kings Laundry’s ability to expand during a time when the overall demand for flat linen rental and maintenance services in the hospitality sector was in decline is illustrative of Kings Laundry’s competitive acumen.
- 4.114 In Table 6, the Commission sets out the average price per linen item ³²⁶ charged by competitors in the hospitality market in the State. The Commission notes that pricing of outsourced flat linen rental and maintenance services will depend on many factors including customer size, customer location, frequency of deliveries etc. It is for this reason that the Commission has not attempted to estimate the average price of each individual linen laundry. Instead the Commission asked the Parties and Competitors to provide their own estimate of their average prices charged to: (i) healthcare; and (ii) hospitality customers.
- 4.115 In this regard, the Commission notes that in Berendsen’s internal documents Berendsen itself [...] (see Figure 6 below). Thus, the Commission found it appropriate to compare the average prices cited by all linen laundries.

Figure 6: Extract from Berendsen’s Internal Document [REDACTED]

³²² Stated by Kings Laundry during the Commission’s meeting with Kings Laundry on 1 February 2019.

³²³ *Ibid.*

³²⁴ See pages 22 and 23. Accessible at https://issuu.com/ashvillemedia/docs/h_c_feb_2016_online.

³²⁵ Stated by Kings Laundry during the Commission’s meeting with Kings Laundry on 1 February 2019.

³²⁶ The Commission understands that this metric is derived by dividing total turnover in a given period by the number of linen items processed by linen laundry in the same period.



- 4.116 Table 6 indicates that Kings Laundry's average price in 2018 was [...] ([...] price was [...]). In comparison, Berendsen's and Celtic Linen's prices were [10-20]% to [10-20]% [...] than Kings Laundry's price respectively.

Table 6: Average price of flat linen items in the hospitality market in 2018 [REDACTED]

Linen Laundry	Average price per linen item in the hospitality market
Premier Linen	€[...]
Kings Laundry	€[...]
Linencare	€[...]
OCL	€[...]
Carraig Linen	€[...]
Lilliput	€[...]
Berendsen	€[...]
Celtic Linen	€[...]
Ashton Linen	€[...]

Source: Information provided by the Parties and the Competitors.

- 4.117 Kings Laundry also demonstrated willingness to invest in modern equipment which allowed it to achieve greater efficiencies.³²⁷ In this regard, the Commission notes that in 2016 Kings Laundry opened its new facility in Cork having invested €[...] in total.³²⁸ Berendsen, in its internal documents that describe [...] notes the following in relation to [...]:

"[...] "³²⁹

- 4.118 The importance of Kings Laundry as a strong competitive force in the hospitality market is further supported by evidence from Berendsen's internal documents as set out below:

- "[...]"³³⁰
- "[...]"³³¹

³²⁷ During the Commission's meeting with Kings Laundry on 1 February 2019, Kings Laundry noted that its Cork facility is [...].

³²⁸ In response to question 13 of the First RFI, Kings Laundry noted that [...].

³²⁹ Internal email between Berendsen and Elis titled [...], dated 2 February 2018 provided by Berendsen in response to question 1 of the first RFI.

³³⁰ Internal email between Berendsen and Elis titled [...], dated 2 February 2018 provided by Berendsen in response to question 1 of the first RFI.

³³¹ Internal email between Berendsen and Elis titled [...], dated 19 March 2018 provided by Berendsen in response to question 1 of the first RFI.



- “[...]”³³²
- “[...]”³³³
- “[...]”
- “[...]”³³⁴

4.119 In essence, the Proposed Transaction would see Kings Laundry, with a high market share of the hospitality market, being incorporated into Berendsen, which has a relatively limited and declining market share in the supply of outsourced flat linen rental and maintenance services to hospitality customers in the State.³³⁵

Closeness of competition

4.120 Paragraph 4.19 of the Commission’s Merger Guidelines states that *“All things being equal, a merger between close competitors (i.e., competitors engaged in intense competition)”³³⁶ will remove a strong competitive constraint and hence be more likely to raise competition concerns than a merger between distant competitors.”*

4.121 In assessing the closeness of competition between Berendsen and Kings Laundry the Commission has examined the following evidence:

- a) the views of the Parties (summarised in paragraphs 4.81 to 4.83 above);
- b) the Parties’ pre-merger documents (discussed in paragraph 4.81 above);
- c) the views of third parties (summarised in paragraphs 4.99 to 4.107 above);
- d) the analysis of geographic areas and customer segments that linen laundries are catering for (discussed in paragraphs 4.122 to 4.129 below);
- e) analysis of tendering data (discussed in paragraphs 4.130 to 4.134 below);
- f) analysis of the Parties’ customer loss data (discussed in paragraphs 4.135 to 4.141 below); and
- g) the Amárach Survey (discussed in paragraphs 4.142 to 4.145 below).

The analysis of geographic areas and customer segments that linen laundries are catering for

4.122 The Commission examined whether the Parties target the same geographic areas and/or customer segments. In this regard, the Commission notes that currently the Parties and Celtic Linen provide nationwide services, with [...] also attempting to become a national supplier. Other linen laundries tend to provide services regionally

³³² Page 1 of the of the Document titled [...] provided by Berendsen in response to question 9 of the First RFI.

³³³ Page 3 of the of the Document titled [...] provided by Berendsen in response to question 9 of the First RFI.

³³⁴ Page 4 of the of the Document titled [...] dated 11 October 2016 provided by Berendsen in response to question 9 of the First RFI. During the Commission’s meeting with Berendsen on 30 January 2019, Berendsen confirmed that [...].

³³⁵ According to Berendsen’s internal document [...] provided by Berendsen in response to Question 9 of the first RFI.

³³⁶ Footnote 9 of the Commission’s Merger Guidelines states that *“In a differentiated product market the most intense competition will occur between the most substitutable products or services.”*



(i.e., to customers that are relatively close to their facilities). This is illustrated by examining turnover by region, and is shown in Table 7 below.

Table 7: Linen laundries' turnover in the hospitality market by region, 1 January 2017 - 31 December 2017 [✂ REDACTED]

		Berendsen		Kings Laundry		Celtic Linen		OCL		Linencare		Premier Linen		Lilliput		Carraig Linen	
	Region	€	%	€	%	€	%	€	%	€	%	€	%	€	%	€	%
In 000s	Leinster	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%
	Munster	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%
	Connacht	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%
	Ulster	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%
	Total	[...]	100%	[...]	100%	[...]	100%	[...]	100%	[...]	100%	[...]	100%	[...]	100%	[...]	100%

Source: The Commission's analysis of information provided by linen laundries



- 4.123 In addition, the Commission asked linen laundries to indicate whether they provide flat linen rental and maintenance services to customers that have sites located in 3 or more regions of the State. According to the Parties, Berendsen supplies outsourced flat linen rental and maintenance services to [...] customer with sites in two regions of the State, but does not supply any hospitality customers with sites in more than two regions.³³⁷ Kings Laundry serves purchasing groups, rather than individual customers with multiple sites and in 2018 it supplied [...] purchasing groups with sites in 3 or more regions.³³⁸ [...] reported revenue from customers with sites in 3 or more regions, but no other linen laundry indicated any revenue from customers with multi-regional sites.
- 4.124 In order to further examine the significance of multi-site customers, the Commission assessed current and previous supply to hotel groups or hospitality management/purchasing groups.³³⁹ The Commission's analysis is set out in Table 8.

³³⁷ Frontier Economics Report, paragraph 2.14 a.

³³⁸ Frontier Economics Report, paragraph 2.14 a.

³³⁹ Hospitality management/purchasing groups such as [...] act as outsourced procurement partners on behalf of independent hotels. The list of hotel and hospitality management/purchasing groups was provided by Kings Laundry in response to Question 20 of the First RFI. It should not be interpreted as exhaustive list of all multi-site hospitality customers in the State, but it provides indication on which linen laundries are catering for these type of customers.

Table 8: Multi-site customer analysis [✂ REDACTED]

		[...]		[...]		[...]		[...]		[...] ³⁴⁰		[...]		[...]		[...]	
iD	Hotel group	Supply now (SN)	Supplied previously (SP)	SN	SP	SN	SP	SN	SP	SN	SP	SN	SP	SN	SP	SN	SP
1	[...]	YES	-	YES	-	YES	-	YES	-	NO	NO	YES	-	YES	-	NO	NO
2	[...]	NO	NO	YES	-	NO	YES	YES	NO	NO	NO	NO	NO	NO	NO	NO	NO
3	[...]	NO	NO	YES	-	YES	-	YES	-	YES	-	NO	NO	NO	NO	NO	NO
4	[...]	NO	NO	YES	-	NO	NO	NO	NO	YES	-	NO	NO	NO	YES	NO	NO
5	[...]	NO	NO	YES	-	NO	NO	YES	-	NO	NO	NO	NO	NO	NO	NO	NO
6	[...]	NO	YES	YES	-	NO	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO	NO
7	[...]	NO	NO	YES	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
8	[...]	NO	NO	YES	-	NO	NO	NO	NO	NO	NO	NO	YES	NO	NO	NO	NO
9	[...]	NO	YES	YES	-	NO	NO	NO	NO	NO	NO	NO	YES	NO	YES	NO	NO
10	[...]	NO	NO	YES	-	NO	YES	NO	NO	NO	NO	NO	NO	NO	YES	NO	NO
11	[...]	YES	-	YES	-	NO	YES	NO	NO	NO	NO	NO	NO	YES ³⁴¹	-	NO	NO
12	[...]	NO	NO	YES	-	NO	YES	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
13	[...]	NO	YES	YES	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
14	[...]	NO	NO	YES	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
15	[...]	NO	NO	YES	-	NO	YES	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
16	[...]	NO	NO	YES	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
17	[...]	NO	NO	YES	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
18	[...]	NO	YES	YES	-	NO	YES	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
19	[...]	NO	YES	YES	-	NO	YES	NO	NO	NO	NO	NO	YES	NO	NO	NO	NO
20	[...]	NO	YES	YES	-	NO	YES	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
21	[...]	NO	YES	YES	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO

³⁴⁰ [...] did not provide response to this question. The Commission, used information provided by Kings Laundry and the Customers in order to identify which multi-site hospitality customers are currently supplied or were supplied previously by [...]. In any case, the Commission notes that [...] does not provide outsourced flat linen rental and maintenance services in [...].

³⁴¹ It is the Commission's understanding that [...].

		[...]		[...]		[...]		[...]		[...] ³⁴⁰		[...]		[...]		[...]	
iD	Hotel group	Supply now (SN)	Supplied previously (SP)	SN	SP	SN	SP	SN	SP	SN	SP	SN	SP	SN	SP	SN	SP
22	[...]	YES	-	YES	-	YES	-	NO	YES	NO	NO	NO	NO	NO	NO	NO	NO
23	[...]	NO	NO	YES	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
24	[...]	YES	-	YES	-	YES	-	YES	-	YES	-	NO	NO	NO	NO	NO	NO
25	[...]	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	YES	-	NO	NO

Source: The Commission's analysis of information provided by linen laundries



4.125 Table 8 illustrates the following:

- the majority of multi-site hospitality customers (17 out of 25) currently have a single supplier of outsourced flat linen rental and maintenance services.
- Kings Laundry currently supplies outsourced flat linen rental and maintenance services to the vast majority of multi-site hospitality customers ([...] out of 25);
- Berendsen and Celtic Linen supply (or used to supply) outsourced flat linen rental and maintenance services to a significant number of multi-site hospitality customers ([...] and [...]) respectively) – those multi-site hospitality customers that were previously serviced by these two linen laundries are currently purchasing outsourced flat linen rental and maintenance services from Kings Laundry;
- Only Kings Laundry and one competitor ([...]) are the sole suppliers of outsourced flat linen rental and maintenance services to multi-site hospitality customers. All other linen laundries (including Berendsen and Celtic Linen) [...] supply outsourced flat linen rental and maintenance services to those multi-site hospitality customers that prefer to have several suppliers (as opposed to a single national supplier); and
- to date, [...] has not supplied outsourced flat linen rental and maintenance services to multi-site customers.

4.126 The Commission also compared linen laundries by examining their customers' sizes (in terms of turnover).³⁴² The Commission notes that Kings Laundry has [...]. However, the Commission notes that no definitive overall conclusion can be drawn, because information was not available from all linen laundries.

4.127 Finally, the Commission considered whether having facilities in more than one location (as is the case with the Parties and Celtic Linen) accorded an advantage over linen laundries having only one facility. For example, [...] is of the view that not having a second facility in a different location was one of the reasons why they were unsuccessful in bidding for [...] contract.³⁴³

4.128 The Commission considers that having a facility in more than one location may be an advantage in terms of having better contingency planning. Contingency planning is an important criterion for organisations in the hospitality sector when selecting providers of flat linen rental and maintenance services. Also, the Amárach Survey indicates that overall over 4 in 5 hospitality customers said that good contingency plans were either essential or very important.³⁴⁴ However, the use of multiple suppliers to some extent provides an alternative means of contingency planning for hospitality customers.

4.129 The Commission's view is that, in the hospitality market, both customers and competitors have largely overcome any disadvantages associated with geographic

³⁴² Only the Parties and Celtic Linen were able to provide the requested information.

³⁴³ Stated by [...] during the Commission's telephone call with [...] on 20 February 2019.

³⁴⁴ Slide 36 of the Amárach Survey. The Commission notes that this slide refers to responses from all respondents rather than just hospitality customers.



location. Some customers have chosen to use multiple suppliers of flat linen, so minimising dependence on any one facility. There is evidence of competitors subcontracting work in areas which are less financially attractive for them to supply, which extends their geographic reach.

Tender participation data

4.130 The Commission's investigation revealed that customers in the hospitality market tend to issue RFQs or engage in bilateral negotiations rather than issue formal tenders. The exception to this is higher education institutions and other public sector organisations that require outsourced flat linen rental and maintenance services and are obliged to abide by tendering rules (e.g., the Houses of the Oireachtas Commission). Thus, information on tender participation is very limited.

4.131 Nevertheless, according to information provided by Berendsen,³⁴⁵ in recent years the Parties competed against each other for contracts of two major customers in the hospitality market (in terms of potential annual turnover):

a) [...] in 2017; and

b) [...] in 2018.

4.132 In this regard, during the meeting with the Commission, Berendsen stated that it would always expect to compete for large hospitality contracts.³⁴⁶

4.133 In general, the Commission observes that more recently, Berendsen's attempts to win [...] have not been successful. For example, Berendsen was not successful in its bids made to [...] (won by Kings Laundry) or [...] (won by [...]). Berendsen's declining turnover in the hospitality sector also reflects Berendsen's market position. The Commission's view is supported by a comment of one hospitality customer³⁴⁷ which stated that Berendsen is not well known for serving customers in the hospitality sector. Thus, this customer noted that it might [...].

4.134 In summary, the Parties tend to participate in ITTs/RFQs issued by organisations in the hospitality sector. However, to date, Berendsen's participation in ITTs/RFQs appears to have little impact on Kings Laundry's probability of winning contracts.

Analysis of the Parties' customer loss data

4.135 The Commission notes that the Parties provided a relatively limited number of instances where their hospitality customers switched to another supplier in the period from 1 January 2014 to 30 June 2018.³⁴⁸ The analysis of customer loss data is therefore based on a small dataset.

³⁴⁵ Information provided by Berendsen in response to Question 22 of the First RFI.

³⁴⁶ The Commission's meeting with Berendsen on 30 January 2019.

³⁴⁷ See the Commission's record of a phone call with [...] dated 15 January 2019.

³⁴⁸ While in response to question 25 of the First RFI, Kings Laundry provided numerous examples where it attempted to win hospitality customers, the Commission was unable to unambiguously verify the identities of participating competitors that also attempted to win cited hospitality customers.



- 4.136 The extent to which the Parties have won or lost customers between each other provides a useful indicator of the closeness of competition between them.³⁴⁹ The Commission explored switching patterns over time using information provided by the Parties. Both Parties provided a list of customers that switched from them in the period from 1 January 2014 to 30 June 2018. The Commission estimated switching ratios or diversion ratios between the Parties in terms of: (i) the number of switching customers (“diversion ratio”)³⁵⁰ and (ii) lost contract value of switching customers (“weighted diversion ratio”).³⁵¹
- 4.137 In performing this analysis, the Commission included only customers where the parties were able to identify who those customers switched to (e.g., name of competitor or OPL). The Commission also excluded customers that had become bankrupt (i.e., no longer required outsourced flat linen rental and maintenance services) and customers who received service cancellation letters (as opposed to switching on their own initiative).
- 4.138 Based on the analysis of Berendsen’s hospitality customers’ loss data for outsourced flat linen rental and maintenance services, the Commission found that Kings Laundry was the closest competitor to Berendsen by a significant margin. In particular, Table 9 indicates that Kings Laundry won [...] % of the customers lost by Berendsen during the examined period and gained [...] % of turnover lost by Berendsen in the same period. In comparison, Celtic Linen won [...] % of customers and [...] % of turnover lost by Berendsen. The Commission also notes that Berendsen used to provide outsourced flat linen rental and maintenance services to several hotel groups and hospitality procurement groups such as [...] ³⁵². All these customers are currently purchasing services from Kings Laundry.³⁵³

Table 9: Berendsen's diversion ratios in the hospitality market, 2014 - 30 June 2018 [REDACTED]

		2014		2015		2016		2017		Jan-Jun 2018		Total	
	Linen Laundry	Nr.	%	Nr.	%	Nr.	%	Nr.	%	Nr.	%	Nr.	%
In terms of customer numbers	Kings Laundry	[...]	[...] %	[...]	[...] %	[...]	[...] %	[...]	[...] %	[...]	[...] %	[...]	[...] %
	Celtic Linen	[...]	[...] %	[...]	[...] %	[...]	[...] %	[...]	[...] %	[...]	[...] %	[...]	[...] %
	Other	[...]	[...] %	[...]	[...] %	[...]	[...] %	[...]	[...] %	[...]	[...] %	[...]	[...] %
	OPL	[...]	[...] %	[...]	[...] %	[...]	[...] %	[...]	[...] %	[...]	[...] %	[...]	[...] %

³⁴⁹ In this regard see paragraph 4.20 of the Commission’s Merger Guidelines.

³⁵⁰ Diversion ratios were calculated by considering, on the numerator, the total number of a party’s (e.g. Berendsen) lost contracts to a certain competitor (e.g., Kings Laundry) within a certain year (e.g. 2017) and on the denominator, the total number of a party’s contracts lost within the same year.

³⁵¹ Weighted diversion ratios were calculated by considering, on the numerator, the total number of a party’s (e.g. Berendsen) lost contracts to a certain competitor (e.g. Kings Laundry) times their total value within a certain year (e.g. 2017) and on the denominator, the total number of a party’s contracts lost times their total value for the same year.

³⁵² Berendsen’s response dated 20 March 2019 to the Commission’s informal query dated 19 March 2019.

³⁵³ Kings Laundry’s response to Question 23 of the Second RFI.

	Total	[...]	100%	[...]	100%	[...]	100%	[...]	100%	[...]	100%	[...]	100%
		€	%	€	%	€	%	€	%	€	%	€	%
In terms of contract value (in €000s)	Kings Laundry	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%
	Celtic Linen	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%
	Other	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%
	OPL	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%
	Total	[...]	100%	[...]	100%	[...]	100%	[...]	100%	[...]	100%	[...]	100%

Source: The Commission's analysis of Berendsen's data on lost hospitality customers

4.139 The same analysis was performed using information provided by Kings Laundry. The Commission found that Berendsen exerted a minor competitive constraint on Kings Laundry in the hospitality sector. In particular, Table 10 indicates that Berendsen did not win any of the hospitality customers lost by Kings Laundry during the examined period. In comparison, Premier Linen won [...] % of customers who switched and gained [...] % of turnover lost by Kings Laundry while Celtic Linen won [...] % of customers and [...] % of turnover lost by Kings Laundry. The Commission notes that [...] % of customers that left Kings Laundry switched to self-supply, but notes that weighted diversion ratio to OPLs is significantly affected by one former customer of Kings Laundry (i.e., Merrion Hotel).

4.140 The Commission notes that Kings Laundry's relatively high customer diversion ratio to OPLs should be considered in the context of low numbers of customers overall that have left Kings Laundry. In the period from 1 January 2014 to 30 June 2018 Kings Laundry, on average, had [...] hospitality customers and €[...] of turnover. [...] hospitality customers that switched to OPLs represent just [...] % of Kings Laundry's customer base and the turnover lost from these customers represents just [...] % of Kings laundry's average turnover. Thus, Kings Laundry's diversion ratio to OPLs does not mitigate the Commission's view that for most customers a switch to OPL is not a viable option. The competitive pressure associated with customers' ability to switch to self-supply is discussed in paragraphs 4.201 to 4.202 below.³⁵⁴

Table 10: Kings Laundry's diversion ratios in the hospitality market, 2014 - 30 June 2018 [REDACTED]

		2014		2015		2016		2017		Jan-Jun 2018		Total	
	Linen Laundry	Nr.	%	Nr.	%	Nr.	%	Nr.	%	Nr.	%	Nr.	%
In terms of customer numbers	Berendsen	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%
	Celtic Linen	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%
	Premier Linen	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%

³⁵⁴ Please also see Appendix 4 which sets out organisations with OPLs.



	Carraig Linen	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%
	Linencare	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%
	Other	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%
	OPL	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%
	Total	[...]	100%	[...]	100%	[...]	100%	[...]	100%	[...]	100%	[...]	100%
		€	%	€	%	€	%	€	%	€	%	€	%
In terms of contract value (in €000s)	Berendsen	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%
	Celtic Linen	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%
	Premier Linen	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%
	Carraig Linen	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%
	Linencare	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%
	Other	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%
	OPL	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%
	Total	[...]	100%	[...]	100%	[...]	100%	[...]	100%	[...]	100%	[...]	100%

Source: The Commission's analysis of Kings Laundry's data on lost hospitality customers

4.141 In summary, the switching data shows that the large majority of hospitality customers and revenue lost by Berendsen was lost to Kings Laundry. On the other hand, the majority of hospitality customers and revenue lost by Kings Laundry was lost to [...].³⁵⁵ The Commission notes the Parties' view that diversion can only be considered where "*..whenever Berendsen lost to Kings Laundry, it was the second choice bidder for that customer*".³⁵⁶ As the Commission has set out in paragraphs 4.39 to 4.52, this simplified description of bidding processes ignores the strategic interaction between bidders and the role played by the number of competitors in such processes. Therefore the ranking of bidders is not the sole factor in determining the competitive constraint posed by competing bidders. Rather, it is also important to establish how their presence as independent bidders affects the bids of all bidders.³⁵⁷ In any event, based on all of the available evidence, the Commission is satisfied that, to date, Berendsen has posed a very limited constraint on Kings Laundry in the hospitality market and it is unlikely that Berendsen's participation or expected participation in ITT's/RFQs would have a major effect on Kings Laundry's bids.

The Amárach Survey

4.142 The Amárach Survey included questions designed to examine the closeness of competition between linen laundries in the hospitality market.

4.143 When asked about the suppliers who they considered in tenders and negotiations, hospitality sector respondents indicated that Berendsen and Kings Laundry were closely competing with each other. In particular the Amárach Survey results show that:

³⁵⁵ When OPL is not taken into account.

³⁵⁶ Frontier Economics Report, paragraph 4.21.

³⁵⁷ This view is confirmed in the DotEcon report, slide 9



- a) All hospitality respondents who switched from Berendsen switched to Kings Laundry while no hospitality respondents who switched from Kings Laundry, switched to Berendsen;³⁵⁸
 - b) Hospitality respondents were asked what they would do if their supplier of outsourced flat linen rental and maintenance services raised its prices for the service by between 5% and 10% and everything else remained the same (price diversion). 39% of the hospitality respondents said they would use another linen laundry provider instead.³⁵⁹ 18% said they would 'shop around' and 17% said they would stay with their current linen laundry provider. 6% said they would re-tender and just 2% said they would consider self-supply. However, of those who said they would switch, when asked who they would switch to 88% said they didn't know.³⁶⁰
- 4.144 Moreover, most hospitality respondents said that they have not become aware of any new linen laundries since they last procured outsourced flat linen rental and maintenance services.³⁶¹
- 4.145 To conclude, although sample sizes are too small to allow the Commission to put significant weight on individual figures, the following broad findings can be drawn from the results of the Amárach Survey:
- a) Kings Laundry holds an influential position in the hospitality market;
 - b) Kings Laundry and Celtic Linen are seen as the two main providers of outsourced flat linen rental and maintenance services to hospitality customers with other credible alternatives being OCL, Linencare, Premier Linen and to a lesser extent Berendsen; and
 - c) there is evidence to indicate that linen laundries other than Berendsen and Kings Laundry are widely known in the hospitality sector.

Conclusion on closeness of competition

- 4.146 The evidence presented in paragraphs 4.120 to 4.145 above, in itself, does not enable the Commission to conclude that the Proposed Transaction is unlikely to lead to an SLC in the hospitality market. The Commission notes that the Proposed Transaction will result in the merged entity having a high market share in the already highly concentrated hospitality market. Kings Laundry's rapid growth was mainly at the expense of Berendsen and Celtic Linen. Thus, the Proposed Transaction will eliminate an aggressive competitor which exerts a significant competitive constraint on both of these linen laundries as well as other linen laundries.
- 4.147 The nearest competitor (Celtic Linen) will be approximately [...] of the size of the merged entity on the basis of H1 2018 market shares in the hospitality market.³⁶² While there are several other providers in the hospitality market, they are geographically focused,

³⁵⁸ See slide 31 of the Amárach Survey.

³⁵⁹ See slide 53 of the Amárach Survey.

³⁶⁰ See slide 54 of the Amárach Survey.

³⁶¹ See slide 47 of the Amárach Survey.

³⁶² See Table 3 above.



and tend to engage in smaller contracts that are of lesser interest to the larger linen laundries.

- 4.148 While Berendsen does not appear in itself to be an important and significant competitor, given the strength of the merged entity in the hospitality market, the Commission has gone on to consider whether existing competitors would act as an effective competitive constraint following the implementation of the Proposed Transaction.

Constraints from competitors following the implementation of the Proposed Transaction

- 4.149 In order to assess the strength of competitive constraints from the remaining competitors on the merged entity, the Commission has followed the CCPC's Merger Guidelines³⁶³ and considered the following:

- a) whether there is substantial competition from remaining competitors;
- b) whether remaining competitors have sufficient production capacity to increase output to respond to the exercise of market power by the merged entity; and
- c) whether remaining competitors have a strong incentive to compete in order to exert a sufficient competitive constraint on the merged entity.³⁶⁴

Constraints exerted by Celtic Linen

- 4.150 Celtic Linen is active in the supply of outsourced flat linen rental and maintenance services to hospitality customers in the State.³⁶⁵ On the basis of the Commission's market share calculations,³⁶⁶ Celtic Linen accounted for [10-20]% of the hospitality market in H1 2018. In addition, on the basis of information obtained by the Commission, Celtic Linen's average price per linen item in the hospitality market in 2018 was € [...] average price.³⁶⁷
- 4.151 In general, the Commission broadly agrees with some of the arguments raised by the Parties in the Report³⁶⁸ on Celtic Linen. For example, based on information obtained from Celtic Linen, it is evident that Celtic Linen has benefited from [...], the acquisition of Millbrook Linen, [...] and it has gained hospitality customers³⁶⁹ since exiting examinership. In addition, the Commission broadly agrees that Celtic Linen's financial position has been improving since coming out of examinership.³⁷⁰ However, the Commission notes that Celtic Linen still made a post-tax loss of approximately €1.6 million in 2017.³⁷¹ While the Commission considers that Celtic Linen will continue to compete against the merged entity in the hospitality market post-transaction, the

³⁶³ Paragraph 4.11 of the Commission's Merger Guidelines

³⁶⁴ See paragraph 4.11 of the Commission's Merger Guidelines.

³⁶⁵ See Celtic Linen's Response to the First Competitor Questionnaire

³⁶⁶ See Table 3 above.

³⁶⁷ See Table 6 above

³⁶⁸ See paragraph 4.239 below for a summary of the Report on Celtic Linen.

³⁶⁹ An example of such hospitality customers includes the following: [...]. The Commission notes that Celtic Linen has also [...]. Please see meeting minutes with Celtic Linen [...].

³⁷⁰ See meeting minutes with Celtic Linen [...]; phone call record with Celtic Linen [...]; and, Celtic Linen's response to the First Competitor Questionnaire.

³⁷¹ Celtic Linen Directors' Report and Financial Statements for year to 31 December 2017, page 7.



Commission is concerned that Celtic Linen by itself would not exert an effective competitive constraint that would preclude the merged entity from increasing prices and/or reducing service quality.

- 4.152 Information provided by Celtic Linen indicates that Celtic Linen currently supplies nationwide outsourced flat linen rental and maintenance services to hospitality customers.³⁷² Also, Celtic Linen currently supplies outsourced flat linen rental and maintenance services to [...] hotel groups in the State out of the 25 listed in Table 8 (and previously supplied [...]). Finally, Celtic Linen informed the Commission that it has [...] capacity, as outlined in Figure 7 and Figure 8 below.³⁷³

Figure 7: Celtic Linen's Production Capacity of its Wexford facility [REDACTED]

Source: The Commission based on information provided by Celtic Linen in response to the Commission's First Competitor Questionnaire.

Figure 8: Celtic Linen's Production Capacity of its Naas facility [REDACTED]

Source: The Commission based on information provided by Celtic Linen in response to the Commission's First Competitor Questionnaire.

- 4.153 The Commission notes that the evidence presented above indicates that Celtic Linen is likely to continue to compete in the hospitality market and that it has spare production capacity to be able to respond to a post-merger price increase by the merged entity.

Constraints exerted by OCL

- 4.154 OCL is a private limited company incorporated in 2000 and registered in the State at 1 Abbey Street, Ballinrobe, Co. Mayo. OCL has one laundry facility in the State located in Ballinrobe, Co. Mayo. OCL [...]. OCL [...]³⁷⁴, ...³⁷⁵
- 4.155 On the basis of the Commission's market share calculations³⁷⁶, OCL accounted for [10-20]% of the hospitality market in H1 2018. On the basis of information obtained by the Commission, OCL's average price per linen item in the hospitality market in 2018 was € [...] average price.³⁷⁷
- 4.156 OCL's hospitality customers in the State include both hotels and restaurants located in counties [...]. In 2018, more than [...] % of OCL's hospitality customers in the supply of

³⁷² Celtic Linen's response to question 5 in the Second Competitor Questionnaire.

³⁷³ Meeting minutes with Celtic Linen [...]; phone call record with Celtic Linen [...]; and Celtic Linen's response to the First Competitor Questionnaire.

³⁷⁴ ISO 9001 is a quality management standard. According to Berendsen, "It sets out the basis for how a business' quality systems operate and what should be included in those systems." Berendsen's clarifications of its response to question 19 of the First RFI set out in page 5 of the letter dated 30 November 2018.

³⁷⁵ See OCL's Response to the First Competitor Questionnaire and phone call record with OCL [...].

³⁷⁶ See Table 3 above.

³⁷⁷ See Table 6 above.



outsourced flat linen rental and maintenance services in the State were located in [...].³⁷⁸ In addition, OCL informed the Commission that [...].³⁷⁹

4.157 OCL informed the Commission that it currently has [...].³⁸⁰ There are [...].³⁸¹ OCL also noted that [...].³⁸² Furthermore, OCL indicated that recently [...] and [...] gave business to OCL.³⁸³

4.158 The Commission's view is that OCL is likely to continue to be a viable competitor in the hospitality market. The Commission recognises that OCL has sufficient capacity to respond to any price increases implemented by the merged entity and that it is currently seeking to expand its activities in the hospitality market.

Constraints exerted by Linencare

4.159 Linencare is a private limited company incorporated in 1998 and registered in the State at Currabeg Business Park, Ardee, Co. Louth. Linencare has one laundry facility in the State located in Ardee, Co. Louth. Linencare [...]. Linencare [...].³⁸⁴

4.160 On the basis of the Commission's market share calculations,³⁸⁵ Linencare accounted for [0-10]% of the hospitality market in H1 2018. On the basis of information obtained by the Commission, Linencare's average price per linen item in the hospitality market in 2018 ranged from €[...] to €[...], ranking it [...] average price.³⁸⁶

4.161 Linencare's hospitality customers in the State include both hotels and restaurants located in counties [...]. Linencare informed the Commission that [...].³⁸⁷

4.162 Linencare indicated to the Commission that its facility is currently operating at approximately [...] % of its total capacity. There are currently [...] in respect of Linencare's laundry facility, i.e., [...]. In addition, [...].³⁸⁸

4.163 Finally, Linencare informed the Commission that Linencare is achieving an average of [...] % growth per annum and that it is intended that Linencare's turnover per annum increases from its current €[...] to €[...].³⁸⁹

4.164 The Commission's view is that Linencare will continue to be a viable competitor in the hospitality market. The Commission notes that Linencare has some production capacity that would allow it to respond to some extent to a price increase implemented by the merged entity and that it currently seeks to expand its activities in the hospitality market.

³⁷⁸ See response to question 1 in the Second Competitor Questionnaire.

³⁷⁹ See phone call record with OCL [...].

³⁸⁰ See OCL's response to question 5 and 7 of the Competitor Questionnaire.

³⁸¹ See phone call record with OCL [...].

³⁸² See phone call record with OCL [...].

³⁸³ See the Commission's meeting minutes with OCL [...].

³⁸⁴ See Linencare's Response to the First Competitor Questionnaire and phone call record with Linencare [...].

³⁸⁵ See Table 3 above.

³⁸⁶ See Table 6 above.

³⁸⁷ Furthermore, Linencare noted that [...]. See Linencare's response to the First Competitor Questionnaire and phone call record with Linencare [...].

³⁸⁸ See phone call record with Linencare [...].

³⁸⁹ See phone call record with Linencare [...].



Constraints exerted by Premier Linen

- 4.165 Premier Linen was registered in 1999 and has a registered address at 62/63 Boyne Road, Dublin Industrial Estate, Glasnevin, Dublin 11. Premier Linen has only one laundry facility in the State located at 62/63 Boyne Road, Dublin Industrial Estate, Glasnevin. Premier Linen does not [...].³⁹⁰
- 4.166 On the basis of the Commission's market share calculations,³⁹¹ Premier Linen accounted for [0-10]% of the hospitality market in H1 2018. On the basis of information obtained by the Commission, Premier Linen's average price per linen item in the hospitality market in 2018 was €[...] average price.³⁹²
- 4.167 Premier Linen's hospitality customers in the State include hotels, B&Bs and restaurants predominantly located in [...]. However, Premier Linen also supplies outsourced flat linen rental and maintenance services – albeit to a minimal extent – to hospitality customers located in [...]. Premier Linen also informed the Commission that it used to supply the following hotel chains, i.e., [...], as outlined in Table 8 above.³⁹³
- 4.168 Premier Linen indicated to the Commission that its facility is operating at [...] capacity. For instance, while Premier Linen [...], it is [...]. There is currently [...] in respect of Premier Linen's laundry facility, [...]. There is [...].
- 4.169 The Commission's view is that Premier Linen is likely to continue to be a viable competitor in the hospitality market. However, the Commission notes that Premier Linen has [...]. This would limit the extent to which Premier Linen would be able to respond to some extent to a price increase imposed by the merged entity.

Constraints exerted by Carraig Linen

- 4.170 Carraig Linen is a private limited company incorporated in 2010 and registered in the State at Unit 23a, Cookstown Industrial Estate Tallaght, Dublin 24. Carraig Linen has one laundry facility in the State located in Unit 23a, Cookstown Industrial Estate, Tallaght, Dublin 24. Carraig Linen [...]. Carraig Linen [...].³⁹⁴
- 4.171 On the basis of the Commission's market share calculations,³⁹⁵ Carraig Linen accounted for [0-10]% of the hospitality market in H1 2018. On the basis of information obtained by the Commission, Carraig Linen's average price per linen item in the hospitality market in 2018 was € [...] average price.³⁹⁶
- 4.172 Carraig Linen's hospitality customers in the State include restaurants, golf clubs, student accommodation, small hotels, all located in [...]. All of Carraig Linen's hospitality

³⁹⁰ See Premier Linen Response to the First Competitor Questionnaire and phone call record with Premier Linen [...].

³⁹¹ See Table 3 above.

³⁹² See Table 6 above.

³⁹³ See email from [...].

³⁹⁴ See Carraig Linen's response to the First Competitor Questionnaire and phone call record [...].

³⁹⁵ See Table 3 above. As noted in Table 3 above, Carraig Linen's market share [...].

³⁹⁶ See Table 6 above.



customers in respect of the supply of flat linen rental and maintenance services in the State are located in [...].³⁹⁷ In addition, Carraig Linen [...].³⁹⁸

- 4.173 In addition, information provided by Kings Laundry indicates that it [...].³⁹⁹ This information suggests that Kings Laundry [...]
- 4.174 Carraig Linen indicated to the Commission that it [...]. The facility is currently operating [...]. In addition, [...].⁴⁰⁰ Finally, Carraig Linen informed the Commission that its turnover from the supply of outsourced flat linen rental and maintenance services to hospitality customers has been growing annually from 2014 to date.⁴⁰¹
- 4.175 The Commission considers that Carraig Linen is unlikely to exert an effective competitive constraint on the merged entity in the hospitality market post-transaction due to Carraig Linen's different customer segment focus.⁴⁰² The Commission notes that while Carraig Linen appears to have [...], its ability to respond to a price increase implemented by the merged entity is likely to be limited to a particular customer segment which is not currently primarily served by the merged entity.

Constraints exerted by Lilliput

- 4.176 Lilliput is a private limited company incorporated in 1939 and registered in the United Kingdom at Suite 5, Ormeau House, 91-97 Ormeau Road, Belfast. Lilliput is active in the supply of flat linen rental and maintenance services to hospitality customers primarily in [...] and to a limited extent in [...]. Lilliput has one laundry facility located at 33 City Business Park, Dunmurry, Belfast. Lilliput [...]. Lilliput currently [...].⁴⁰³
- 4.177 On the basis of the Commission's market share calculations⁴⁰⁴, Lilliput accounted for just [0-10]% of the hospitality market in H1 2018. On the basis of information obtained by the Commission, Lilliput's average price per linen item in the hospitality market in 2018 was €[...] average price.⁴⁰⁵
- 4.178 In general, Lilliput's hospitality customers in the State are primarily located in counties [...]. Lilliput informed the Commission that it currently supplies outsourced flat linen rental and maintenance services to [...] hotel groups out of the 25 listed in Table 8. It previously supplied an additional [...] of these hotel groups.⁴⁰⁶
- 4.179 Lilliput indicated to the Commission that it has [...] its production capacity, [...]. In addition, Lilliput informed the Commission that it [...].⁴⁰⁷
- 4.180 The majority of Lilliput's turnover in respect of the supply of outsourced flat linen rental and maintenance services to hospitality customers is generated from customers located

³⁹⁷ See Carraig Linen's response to question 1 of the Second Competitor Questionnaire.

³⁹⁸ See Carraig Linen's response to question 3 of the Second Competitor Questionnaire.

³⁹⁹ Kings Laundry's response to question 30 of the first RFI.

⁴⁰⁰ See Carraig Linen's response to the First Competitor Questionnaire and phone call record with Carraig Linen [...].

⁴⁰¹ See Carraig Linen's response to First Competitor Questionnaire.

⁴⁰² In this regard, as noted in paragraph 4.173 above, the Commission notes that Kings Laundry [...].

⁴⁰³ See Lilliput's response to the First Competitor Questionnaire and phone call record with Lilliput [...].

⁴⁰⁴ See Table 3 above.

⁴⁰⁵ See Table 6 above.

⁴⁰⁶ See Lilliput's response to question 3 of the Second Competitor Questionnaire.

⁴⁰⁷ See Lilliput's response to the First Competitor Questionnaire and phone call record with Lilliput [...].



in [...].⁴⁰⁸ However, the Commission notes that Lilliput's turnover in respect of the supply of outsourced flat linen rental and maintenance services to hospitality customers in the State has increased annually from 2014 to 2016 although it [...].⁴⁰⁹

- 4.181 The Commission's view is that Lilliput is likely to continue to be a viable competitor in the hospitality market. While Lilliput [...] that would allow it to respond to a price increase imposed by the merged entity, its presence in the State is very limited (see Table 7 above). The Commission notes that Lilliput's stated intention is to continue to focus on operations in Northern Ireland rather than the State, and that this would limit the extent to which it would act as a constraint on the merged entity.

Constraints exerted by other remaining linen laundries

- 4.182 The Commission notes that out of the remaining 5⁴¹⁰ competitors contacted by the Commission, 3 indicated that they currently supply outsourced flat linen rental and maintenance services to hospitality customers in the State, i.e., [...].⁴¹¹ [...] noted to the Commission that it plans on ceasing its linen rental operations shortly in the State.⁴¹² [...] provides outsourced flat linen rental and maintenance services to hospitality customers in the State from its facilities in [...]. [...] activities in the State are relatively minor and in general limited to counties [...].⁴¹³ Finally, [...] informed the Commission that it provides outsourced flat linen rental and maintenance services to hospitality customers to just [...] in the State and generated a minimal turnover of less than €[...] in the supply of outsourced flat linen rental and maintenance services to hospitality customers in the State in 2017.⁴¹⁴
- 4.183 One of the remaining two competitors contacted by the Commission, [...] informed the Commission that it provides [...] on a local basis⁴¹⁵ in [...]. The remaining competitor, [...] informed the Commission that it does not currently supply outsourced flat linen rental and maintenance services to hospitality customers in the State.⁴¹⁷
- 4.184 The Commission does not consider that these remaining competitors would have the ability to exert a sufficient competitive constraint on the merged entity and thus, are unlikely to credibly constrain the merged entity's ability and incentive to raise prices/reduce service quality.

Conclusion on constraints from competitors

- 4.185 The Parties are facing a number of competitors in the hospitality market. On the basis of the most recent market share figures obtained by the Commission in respect of the hospitality sector, i.e., for the period January 2018 to June 2018 the largest competitors

⁴⁰⁸ See Lilliput's response to question 1 in the Second Competitor Questionnaire.

⁴⁰⁹ See Lilliput response to First Competitor Questionnaire.

⁴¹⁰ These competitors are as follows: [...].

⁴¹¹ See [...] response to the First Competitor Questionnaire.

⁴¹² In addition, [...] informed the Commission that they are currently only renting to 2 small customers with a view to utilising the remaining stock. Please see [...] response to the First Competitor Questionnaire.

⁴¹³ See [...] response to the First Competitor Questionnaire.

⁴¹⁴ See [...] response to question 1 and 9 in the First Competitor Questionnaire.

⁴¹⁵ See [...] response to question 10 of the First Competitor Questionnaire.

⁴¹⁶ [...] informed the Commission that its operation currently serves customers located [...]. Please see [...] response to the First Competitor Questionnaire.

⁴¹⁷ See [...] response to the First Competitor Questionnaire.



(in terms of market share) are as follows: Celtic Linen ([10-20]% market share), OCL ([10-20]% market share), Linencare's ([0-10]% market share) and Premier Linen ([0-10]%). Celtic Linen's market share declined significantly over the period 2014 to 2017, but has increased in H1 2018, [...] by its acquisition of Millbrook Linen's customers.

- 4.186 Notwithstanding the fact that the largest competitor in the hospitality market, i.e., Celtic Linen has increased its market share from just over [10-20]% to [10-20]% between 2017 and H1 2018 (which [...] reflects its acquisition of Millbrook Linen), Celtic Linen's market share remains well below the merged entity's [50-60]% share in the hospitality market. However, the Commission's market investigation indicated that following the implementation of the Proposed Transaction, in addition to Celtic Linen, the merged entity will face other linen laundries that have grown their market share in recent years such as OCL and Linencare. These linen laundries have expressed their intention to continue growing their turnover. The Commission considers that, while no individual linen laundry is likely to exercise a sufficient constraint, the Parties' competitors collectively would be likely to exert an effective competitive constraint on the merged entity. In paragraphs 4.187 to 4.208 below, the Commission examines whether there are any countervailing factors that would also prevent the merged entity from profitably increasing prices/reducing service quality in the hospitality market.

Likelihood of new entry

- 4.187 In this section, the Commission assesses whether market entry or expansion in the hospitality market might prevent an SLC and as such, considers whether such entry or expansion would be timely, likely and sufficient.

Barriers to Entry and Expansion

- 4.188 The Commission's investigation identified some barriers to entry and expansion in the hospitality market.
- 4.189 In relation to greenfield new entry, the Commission notes that a considerable financial investment⁴¹⁸ (e.g., capital costs for premises, linen, equipment, (e.g., CBW), civil engineering services (drainage, steam, water and ventilation systems) etc.) is required for a new entrant to enter the hospitality market. For example, [...] noted that its current laundry facility cost circa €[...] to set up and also noted that a new laundry facility would cost approximately €[...] to set up.⁴¹⁹ In comparison, [...] estimated that it would cost circa €[...] to set up a new laundry facility.⁴²⁰ Smaller competitors quoted set up cost estimates of between €150,000⁴²¹ (on a small scale) and €300,000.⁴²² Finally, the

⁴¹⁸ See [...] response to question 24 of the First Competitor Questionnaire [...] response to question 24 of the First Competitor Questionnaire and phone call record with [...].

⁴¹⁹ See phone call record with [...].

⁴²⁰ See [...] response to question 26 of the First Competitor Questionnaire. The Commission notes that this estimation excludes the cost of leasing/purchasing the relevant premises as well as transport costs. In addition, this estimation was based on the cost of second hand machinery.

⁴²¹ See [...] response to question 24 of the First Competitor Questionnaire.

⁴²² See [...] response to question 24 of the First Competitor Questionnaire and [...] response to question 25 of the First Competitor Questionnaire, respectively. The former estimation by [...] concerned an initial outlay and the latter estimation by [...] involved second hand equipment and noted that all delivery vehicles and most equipment could be leased or financed.



Commission notes that Kings Laundry's Cork facility required an initial investment of approximately €[...] with an additional €[...] spent in [...].⁴²³

- 4.190 The Commission notes that prior experience/reputation is important for a new entrant when entering the hospitality market.⁴²⁴ For instance, competitors in the hospitality market noted that reputation and prior experience is a key factor for customers at the following stages: when deciding whether the potential supplier is in a position to service them; when deciding to move from one supplier to another; and when they award contracts for "new build" projects.⁴²⁵ However, [...] noted that a number of new entrants in the last 10 years were able to grow very quickly from a small base.⁴²⁶
- 4.191 Finally, the Commission notes that economies of scale are important in the supply of outsourced flat linen rental and maintenance services to hospitality customers in the State, in particular when attempting to win larger hospitality customers in the State.⁴²⁷ For instance, [...] noted that the linen rental business requires volume to deliver margin and as such, it is essential to have a sufficient customer base.⁴²⁸ As a result, such scale economies may limit entry to small scale entry which would be unlikely to act as a timely and sufficiently effective competitive constraint on the merged entity.

Evidence of Market Entry or Expansion

- 4.192 The Commission notes that the ability for wash-only laundrettes/dry cleaners to expand into the hospitality market is plausible. For instance, Kings Laundry originally operated as a wash-only laundrette before entering the hospitality market. In addition, the owners of both [...] first operated dry cleaning businesses before later expanding into the supply of outsourced flat linen rental and maintenance services to hospitality customers in the State.⁴²⁹
- 4.193 The Commission notes that there is also evidence of market entry from operators active in other sectors in the State. For example, [...] previously operated in the clothing manufacturing business before moving into the hospitality market when it closed the clothing manufacturing business.⁴³⁰ [...] opened its facility in the same location as the clothing manufacturing business.
- 4.194 The Commission notes that entry into the hospitality market in the last five years has been small scale and primarily on a regional/local basis. For instance, [...] (incorporated in [...]) does not currently supply outsourced flat linen rental and maintenance services to hospitality customers outside of the Greater Dublin Area and held a minimal [0-10]% market share in the hospitality market in H1 2018.⁴³¹

⁴²³ See Kings Laundry's response to question 13 of the First RFI.

⁴²⁴ See [...] response to question 24 in the First Competitor Questionnaire; [...] response to question 24 in the First Competitor Questionnaire; [...] response to question 10 in the Second Competitor Questionnaire; [...] response to question 10 in the Second Competitor Questionnaire; [...] response to question 15 in the Second Competitor Questionnaire.

⁴²⁵ See [...] response to question 10 in the Second Competitor Questionnaire and [...] response to question 10 in the Second Competitor Questionnaire.

⁴²⁶ See [...] response to question 15 in the Second Competitor Questionnaire.

⁴²⁷ See phone call record with [...].

⁴²⁸ See [...] response to question 24 in the First Competitor Questionnaire.

⁴²⁹ See [...] response to question 24 in the First Competitor Questionnaire and phone call record with [...].

⁴³⁰ See phone call record with [...].

⁴³¹ See [...] response to question 1 of the Second Competitor Questionnaire and please see Table 3 above for market share analysis.



Conclusion on likelihood of market entry

4.195 The Commission notes that barriers to entry and expansion in the hospitality market include both financial barriers and non-financial barriers, as discussed above. While there has not been any significant market entry in the last 5 years, the available evidence indicates that entry into the hospitality market by wash-only laundrettes is plausible. The Commission's view is that barriers to entry appear to be relatively modest and surmountable, and that this should be taken into account when assessing the risk of SLC.

Countervailing buyer power

4.196 The Commission recognises that, in some circumstances, a customer may, because of its position in the market, be able to successfully resist supplier price increases, and may possess sufficient negotiating strength to enable it to constrain the behaviour of a supplier.⁴³² The assessment of CBP considers the extent to which buyer power post-merger would be present and sufficiently effective to prevent an SLC.

4.197 The Commission's Merger Guidelines set out a non-exhaustive list of types of issues to be considered, and types of evidence to be evaluated.⁴³³ For the purposes of this Determination, the Commission considers that the following issues are the most relevant:

- a) a customer's ability to switch away from the merging Parties and/or switch to alternative suppliers (discussed in paragraphs 4.198 to 4.199 below);
- b) the number, nature and viability of alternative options available (discussed in paragraphs 4.200 to 4.202 below); and
- c) the size and significance of individual customers (discussed in paragraphs 4.203 to 4.207 below).

The ability of customers to switch supplier

4.198 The Commission's investigation revealed that customers in the hospitality sector are able to switch supplier of outsourced flat linen rental and maintenance services relatively easily. In this regard, the majority of Customers interviewed by the Commission noted that it was relatively easy to switch. Also, the Amárach Survey indicated that 62% of hospitality respondents thought that switching suppliers was easy.⁴³⁴ The Commission also observed a number of switching examples with several organisations in the hospitality sector switching between linen laundries. However, despite the claims of low barriers, approximately 29% of respondents indicated that they had not procured laundry services in the past five years.⁴³⁵

⁴³² See paragraph 7.1 of the Commission's Merger Guidelines.

⁴³³ See paragraph 7.10 of the Commission's Merger Guidelines.

⁴³⁴ Slide 46 of the Amárach Survey.

⁴³⁵ Slide 26 of the Amárach Survey.



- 4.199 Overall, the Commission is of the view that switching barriers between the customers of linen laundries in the hospitality sector are relatively low.

The number, nature and viability of alternative options available

- 4.200 As noted in paragraph 4.77, the Commission found that the hospitality market is highly concentrated. Kings Laundry serves the majority of the largest hospitality customers in the State. Celtic Linen, OCL, Berendsen, Linencare and Premier Linen are also providing outsourced flat linen rental and maintenance services and can be considered as viable options. Hence, following the implementation of the Proposed Transaction, hospitality customers currently outsourcing their flat linen rental and maintenance requirements could: a) choose between the remaining linen laundries; or b) in a limited number of cases set up an OPL and self-supply their flat linen requirements.
- 4.201 The Commission's consideration of the Parties' arguments in relation to the viability of self-supply as an alternative is summarised in paragraph 4.97. The Commission reiterates its view that a relatively limited set of examples whereby former customers of the Parties switched to OPLs does not in itself indicate that self-supply is a significant competitive constraint that would prevent the merged entity from increasing prices following the implementation of the Proposed Transaction.
- 4.202 Nevertheless, the Commission acknowledges that the option of switching to self-supply is a viable option for a limited number of customers as demonstrated by examples of hotels that have switched to OPLs. For example, hospitality customers with sufficient space for OPL at their premises could threaten the merged entity in response to a price increase/service quality reduction.

The size and significance of individual customers

- 4.203 The Commission found that the purchase of outsourced flat linen rental and maintenance services in the hospitality market is typically characterised by RFQs and/or bilateral negotiations.
- 4.204 The Commission notes that the top 5 customers of the merged entity would collectively account for around [...] % of its total turnover from the provision of outsourced flat linen rental and maintenance services to hospitality customers in the State. The largest customer is [...] which would account for [...] % of the merged entity's turnover. The merged entity is therefore not likely to be overly dependent on any individual customer which, in turn, weakens the negotiating power of individual customers.
- 4.205 The Commission observed that large hotel groups are able to exert some pressure on linen laundries over prices they pay for outsourced flat linen rental and maintenance services and also has discretion on how their purchases of outsourced flat linen rental and maintenance services are distributed between linen laundries. In this regard, the Commission notes that Kings Laundry provided evidence indicating its customers' reluctance to [...].⁴³⁶ In summary, this evidence highlights that:

- a) [...];

⁴³⁶ Kings Laundry's response to Question 33 of the First RFI.



- b) [...];⁴³⁷
- c) [...]; and
- d) [...].

4.206 The Commission understands that ultimately, [...]. Information provided by Kings Laundry indicates that at the end of 2018 it had [...] customers compared to [...] at the end of 2017⁴³⁸ while its EBIT⁴³⁹ [...] from [...] % in 2017 to [...] % in 2018⁴⁴⁰. The Commission did not find any evidence that large hotel groups have threatened to open OPLs, sponsored market entry, or have threatened to do so in response to [...].

4.207 Finally, the Commission notes that [...] and [...] have recently decided to diversify their purchase of outsourced flat linen rental and maintenance services by giving business to [...].⁴⁴¹ This evidence indicates that multi-site hospitality customers are able to secure the purchase of outsourced flat linen rental and maintenance services from multiple sources and are willing to deal with several linen laundries.

Conclusion on CBP

4.208 The Commission notes that customers in the hospitality sector can choose between several linen laundries with the hospitality market exhibiting relatively low barriers to switching. Some hospitality customers can also credibly set up OPLs. The available evidence indicates that some of the larger hospitality customers appear to be able to negotiate favourable deals with linen laundries. Furthermore, multi-site hospitality customers demonstrated willingness and ability to diversify and multi-source their purchase of outsourced flat linen rental and maintenance services. For these reasons, the merged entity would likely be constrained, to a certain degree, by the reaction of its customers to any unilateral price increase and/or reduction of service quality.

Overall conclusion on Unilateral Effects in the hospitality market

4.209 For the reasons set out above and considering all of the evidence described above, the Commission considers that the Proposed Transaction is not expected to result in significant unilateral effects in relation to the hospitality market. This is based on the following findings:

- a) to date, Berendsen has posed a very limited competitive constraint on Kings Laundry in the hospitality market;
- b) the merged entity will continue to face a number of competitors who have grown their turnover in recent years and have excess capacity to be able to constrain the activities of the merged entity;
- c) the hospitality market is growing, and this will encourage market entry;

⁴³⁷ The Commission interprets this notice as the customer's belief that it will obtain lower prices via tender.

⁴³⁸ Kings Laundry's response to Question 3 of the Second RFI.

⁴³⁹ Earnings before interest and taxes.

⁴⁴⁰ Kings Laundry's response to Question 1 of the Second RFI.

⁴⁴¹ See the Commissions meeting minutes with [...].



- d) barriers to entry and expansion in the hospitality market are relatively low. While there has been limited market entry in the last 5 years, the available evidence indicates that entry into the hospitality market by wash-only laundrettes is plausible;
- e) customers in the hospitality sector can choose between several linen laundries. The hospitality market exhibits relatively low barriers to switching. There has been evidence of an increasing number of hospitality customers switching and using multiple linen laundries;
- f) the option of self-supply is also available to a limited number of hospitality customers.

The healthcare market

The nature of pre-merger competition

4.210 In their written and oral submissions, the Parties described the healthcare market as a bidding market, exhibiting the same general characteristics as the hospitality market.⁴⁴² As context for discussion below, the Commission refers back to the discussion on the Parties' view of bidding markets and the Commission's assessment of these views set out in paragraphs 4.39 to 4.50.

4.211 This section sets out the Commission's analysis of the healthcare market as follows:

- market structure;
- market concentration; and
- competitive effects analysis.

Market Structure

Views of the Parties

4.212 The Parties noted that, in their view, their market shares do not reflect the importance of within market differences in the healthcare market, thus overstating the degree of overlap and closeness of competition between the Parties.⁴⁴³

Views of the Commission

4.213 The Commission does not agree that market share analysis is not relevant, for the reasons set out in paragraphs 4.39 to 4.52 above. The Commission notes that, post transaction, the merged entity would have a very large market share in an already highly concentrated market.

4.214 According to the Merger Guidelines:

⁴⁴² Frontier Economics Report, paragraph 4.4.

⁴⁴³ Parties' Response, paragraph 4.2.56 and Frontier Economics Report, paragraphs 2.6 to 2.8.



“The combined market share of the merging parties, when compared with their respective shares pre-merger, can provide an indication of the change in market power resulting from the merger. Competition concerns are more likely to arise when the merger creates a merged entity with a large market share.”⁴⁴⁴

4.215 The Commission has also taken into account guidance from the EC Horizontal Merger Guidelines,⁴⁴⁵ which state that:

“Generally, a merger giving rise to such non-coordinated effects would significantly impede effective competition by creating or strengthening the dominant position of a single firm, one which, typically, would have an appreciably larger market share than the next competitor post-merger. Furthermore, mergers in oligopolistic markets involving the elimination of important competitive constraints that the merging parties previously exerted upon each other together with a reduction of competitive pressure on the remaining competitors may, even where there is little likelihood of coordination between the members of the oligopoly, also result in a significant impediment to competition. The Merger Regulation clarifies that all mergers giving rise to such non-coordinated effects shall also be declared incompatible with the common market.”

4.216 According to the Parties’ estimates, on a national level, the Parties’ combined market share measured in terms of revenue from the supply of outsourced flat linen rental and maintenance services (having regard to the market definition adopted by the Commission) was [50-60]% with an increment⁴⁴⁶ of [10-20]% as a result of the acquisition of Kings Laundry. Table 11 below illustrates the Parties’ estimated shares⁴⁴⁷ in the healthcare market in the period from 1 January 2017 to 31 December 2017.

Table 11: Revenue from the provision of flat linen rental and maintenance services to healthcare customers in the State, 2017 (the parties’ estimates) [REDACTED]

	2017	
	€m	%
Berendsen	[...]	[40-50]
Kings Laundry	[...]	[10-20]
Combined	[...]	[50-60]
Increment		[10-20]
Celtic Linen	[...]	[40-50]

⁴⁴⁴ Merger Guidelines, paragraph 3.4.

⁴⁴⁵ Paragraph 25 of the EC Horizontal Merger Guidelines.

⁴⁴⁶ For the purposes of this Phase 2 Determination, increment refers to incremental market share acquired by Berendsen

⁴⁴⁷ The Parties included potential revenue from customers currently operating OPLs. The inclusion of potential revenue reduces the Parties’ combined market share from [50-60]% to [30-40]%. Such potential revenue is not presented in Table 11, having regard to the relevant product market definition.



	2017	
Total	[...]	100

Source: Information submitted by the parties. Percentages may not add up due to rounding.

4.217 The Commission conducted a market share reconstruction and collected the actual sales volumes of all main competitors in the State for the period from 1 January 2014 to 30 June 2018, which is illustrated by Table 12 below. On the basis of the sales volume data of the Parties and their main competitors, in the period from 1 January 2018 to 30 June 2018, the combined market share of the Parties is [60-70]%, with an increment of [10-20]%. This is higher than the Parties' estimate of their combined market share of [50-60]%.⁴⁴⁸

Table 12: Revenue from the provision of flat linen rental and maintenance services to healthcare customers in the State, 2014 - 30 June 2018 [REDACTED]

	2014		2015		2016		2017		H1 2018	
	€000s	%	€000s	%	€000s	%	€000s	%	€000s	%
Berendsen	[...]	[40-50]	[...]	[40-50]	[...]	[40-50]	[...]	[50-60]	[...]	[50-60]
Kings Laundry	[...]	[0-10]	[...]	[0-10]	[...]	[0-10]	[...]	[10-20]	[...]	[10-20]
Combined	[...]	[50-60]	[...]	[50-60]	[...]	[50-60]	[...]	[60-70]	[...]	[60-70]
Increment		[0-10]		[0-10]		[0-10]		[10-20]		[10-20]
Celtic Linen	[...]	[30-40]	[...]	[30-40]	[...]	[40-50]	[...]	[30-40]	[...]	[30-40]
Other⁴⁴⁹	[...]	[10-20]	[...]	[0-10]	[...]	[0-10]	[...]	[0-10]	[...]	[0-10]
Total	[...]	100	[...]	100	[...]	100	[...]	100	[...]	100

Source: The Commission's analysis using information provided by the parties and the Competitors.

4.218 The combined market shares of the Parties, in addition to other factors assessed in paragraphs 4.226 to 4.377 below, indicate that, following the completion of the Proposed Transaction, the merged entity will enjoy a very strong position in the healthcare market. In this regard, it should be noted that Berendsen's market share remained over [40-50]% since at least 2014. Celtic Linen (the significant competitor to the merged entity), accounts for [30-40]% of the market. Thus, the Proposed Transaction will increase the gap between Berendsen's and Celtic Linen's market share. The Commission notes the Parties' argument that market shares do not fully reflect the fact that in 2017 and 2018 Berendsen lost contracts with [...] to Celtic Linen, which

⁴⁴⁸ In the period from 1 January 2017 to 31 December 2017, the Parties' combined market share was [60-70]% with an increment of [10-20]%. The Parties were also of the view that Linencare and OCL provide flat linen rental and maintenance services to nursing homes and CWS-boco supplies scrub suits, but could not provide estimates of their turnover. See page 15 and page 23 of the Merger Notification Form.

⁴⁴⁹ This group include revenue of [...] and [...].



according to the parties represented a total contract value of approximately €[...].⁴⁵⁰ In this regard, H1 2018 estimates partly reflect Celtic Linen's revenue from some of these customers. However, the Commission considers that even if it was to discount €[...] contract value from Berendsen and add that same amount to Celtic Linen, the merged entity would still have a market share of [60-70]% while Celtic Linen would have a market share of [30-40]%.

4.219 Table 12 indicates that both Berendsen and Kings Laundry increased their market share over the relevant period.⁴⁵¹ In fact, Kings Laundry has been steadily increasing its market share during the examined period (from [0-10]% in 2014 to [10-20]% in the first half of 2018). The Commission is of the view that the growth of Kings Laundry's market share, in combination with other factors discussed in paragraphs 4.265 to 4.274 below, indicates that Kings Laundry is an important and significant competitor in the healthcare market.

4.220 There is very limited participation in the healthcare market by other linen laundries. CWS-boco continues to provide scrub suit rental and maintenance services to hospitals after it transferred its healthcare flat linen business to Celtic Linen in 2015.⁴⁵² Currently, it participates only in those ITTs where scrub suit rental and maintenance services [...]. [...] indicated that it provides outsourced flat linen rental and maintenance services to three nursing home customers⁴⁵³ in the State while [...] supplies outsourced flat linen rental and maintenance services to two nursing homes. It should also be noted that [...] informed the Commission that it intends to fully exit "rental" services within the next 2 years.⁴⁵⁴

Conclusion on market shares

4.221 The Commission is of the view that market share analysis in the healthcare market is relevant, and significantly contributes to an understanding of the evolution of different linen laundries' market position, and to an understanding of market strength and market dynamics.

4.222 Evidence from the Commission's market investigation shows that there are 3 significant suppliers of outsourced flat linen rental and maintenance services to healthcare customers in the State accounting for over [90-100]% of the market. Following the completion of the Proposed Transaction, this will be reduced to 2 significant suppliers of outsourced flat linen rental and maintenance services and the merged entity will enjoy a very strong position in the healthcare market with a market share over [60-70]% and a market share increment of approximately [10-20]% as a result of the Proposed Transaction.

⁴⁵⁰ See page 23 of the Merger Notification Form.

⁴⁵¹ Kings Laundry increased its market share by [...] between 2014 and 30 June 2018, while Berendsen increased its market share by [...] during the same period.

⁴⁵² See <https://www.cws-boco.ie/en-IE/cws-boco-acquires-parts-celtic-linen-ltd>.

⁴⁵³ In a meeting with the Commission, [...] stated that it expects one of these customer to expand. See the Commission's minutes of meeting with [...].

⁴⁵⁴ Please see [...] response to the Commission's First Competitor Questionnaire dated 10 October 2018.



Market Concentration

- 4.223 Market concentration refers to the degree to which production/supply in a particular market is concentrated in the hands of a few large firms. The most commonly used measure of concentration is the Herfindahl-Hirschman Index (“HHI”), which is defined as the sum of the squares of the market shares of all firms participating in the market. According to the Commission’s Merger Guidelines,⁴⁵⁵ any market with a post-merger HHI greater than 1,000 may be regarded as concentrated and any market with a post-merger HHI greater than 2,000 may be regarded as highly concentrated. In a concentrated market, a change in the pre-merger HHI compared to the post-merger HHI of less than 250 is “*unlikely to cause concern*”. In a highly concentrated market, a change in the pre-merger HHI compared to the post-merger HHI of less than 150 is “*unlikely to cause concern*”. Therefore, if the post-merger HHI is above 2,000 and the change in the HHI is greater than 150, this indicates that firms in that market may be able to exercise market power.
- 4.224 Based on the market share estimates set out in Table 12 above, the Commission is of the view that the healthcare market is highly concentrated with a pre-transaction HHI of [4,099]. Table 13 illustrates that the HHI following implementation of the Proposed Transaction would be over 5,300. Furthermore, the change in the HHI would be approximately 1,249, which, as set out in paragraph 3.10 of the Commission’s Merger Guidelines, means that the Commission could not conclude that the Proposed Transaction is unlikely to cause concern and that it should intensify its analysis of the competitive impact of the Proposed Transaction.

Table 13: The HHI in the healthcare market, H1 2018

	H1 2018
HHI pre-transaction	[4,099]
HHI post-transaction	5,348
HHI delta	1,249

Source: The Commission’s analysis using information provided by the parties and parties’ competitors.

- 4.225 In paragraphs 4.226 to 4.377 below, the Commission sets out its competitive effects analysis before reaching its conclusion as to whether the Proposed Transaction would be likely to lead to an SLC in the healthcare market.

Competitive Effects Analysis

- 4.226 In this section, the Commission sets out its analysis of the likely competitive effects of the Proposed Transaction in the healthcare market. In particular, this section examines the likelihood of unilateral effects occurring following implementation of the Proposed Transaction. The likelihood of co-ordinated effects is considered in paragraphs 4.379 to 4.386 below.

⁴⁵⁵ Commission’s Merger Guidelines, paragraph 3.10



4.227 Unilateral effects, as explained in paragraph 4.8 of the Commission's Merger Guidelines, occur when *"a merger results in the merged entity having the ability and the incentive to raise prices at its own initiative and without coordinating with its competitors."* The removal of a competitor of flat linen rental and maintenance services from the healthcare market could lead to consumer harm through higher prices and/or reduced service quality (e.g., loss of frequency of services), particularly in instances where the acquired competitor exerted a significant competitive constraint pre-transaction.

4.228 The Commission's Merger Guidelines note the following:

*"Competitive constraints on a merged entity will be weaker to the extent that (i) there is an absence of substantial competition from other firms in the market or firms likely to enter in a timely manner, (ii) competitors have insufficient productive capacity to increase output, or (iii) competitors do not have a strong incentive to compete (for example, if they might also benefit from increased prices), also referred to as price accommodation."*⁴⁵⁶

4.229 The potential responses of competing suppliers are also relevant in evaluating the merged entity's pricing incentives. Because a merger changes the market structure and eliminates a competitor from the market, it will reduce the constraints faced by both the merged entity and competing suppliers. Competing suppliers may respond to a price rise by the merged firm by raising their own prices. Therefore, the more concentrated a market is and the fewer effective competitors that remain to constrain one another, the more likely it is that a merger will enable the merged entity to raise prices.

Views of the Parties

Pre-merger competitive pressure

4.230 The Parties expressed the view that the Proposed Transaction will not lead to an SLC in the healthcare market.⁴⁵⁷

4.231 The Parties submitted that they face competition from a large number of competitors across a broad range of product/service offerings listed in paragraph 1.4 above. In this regard, the Parties stated that their activities overlap only with respect to flat linen rental and maintenance services.⁴⁵⁸

4.232 The Parties argued that their activities are largely complementary. The Parties stated that Berendsen focus on the supply of workwear rental and maintenance services and, to a lesser extent, the supply of outsourced flat linen rental and maintenance services to healthcare customers and Kings Laundry focus on [...]. In support of this argument, the Parties referred to their revenue in each customer sector. The Parties noted that complementarity between the Parties' activities means that, following the implementation of the Proposed Transaction, the merged entity *"...will be able to serve a broader range of customers and to a higher standard across the board."*⁴⁵⁹

⁴⁵⁶ See paragraph 4.11 of the Commission's Merger Guidelines.

⁴⁵⁷ The Parties' Letter, dated 28 May 2019, paragraph 3.

⁴⁵⁸ See pages 23 to 24 of the Merger Notification Form.

⁴⁵⁹ See page 24 of the Merger Notification Form.

4.233 The Parties claimed that the Commission has conflated Kings Laundry's approach in the hospitality market with its approach in the healthcare market.⁴⁶⁰

4.234 The Parties claimed that Kings Laundry's system of dedicated laundry is not innovative, and is not unique to Kings Laundry.⁴⁶¹ Kings Laundry has also stated that it is [...].⁴⁶²

Closeness of competition

*The Parties' pre-merger documents*⁴⁶³

4.235 Berendsen's internal pre-merger notification documents showed that Berendsen perceives [...]. In particular, the Commission observed that Berendsen itself considered this market to [...].⁴⁶⁴ Berendsen also considered that [...] while [...].⁴⁶⁵ As indicated in paragraph 4.272 below, Berendsen perceived [...].

The Parties' written and oral submissions

4.236 In their written submission, the Parties claimed that the Proposed Transaction would be at least a 4-to-3 merger (including OCL and any other competitors supplying nursing homes) and, if OPL were to be included, a 5-to-4 merger.⁴⁶⁶

4.237 The Parties expressed a view that Kings Laundry is not an important player in the healthcare market⁴⁶⁷ and that the Parties are not close competitors as evidenced from tender participation analysis.⁴⁶⁸ In this regard, the Parties proposed that: *"...when assessing the possible unilateral effects or upward pricing pressure emerging from a merger in a bidding market, the relevant measure of the closeness of competition between the Parties is the probability that, for the contracts one of the merging parties bids for and wins, the other merging party is the customer's second choice bidder"*.⁴⁶⁹⁴⁷⁰

Constraints from remaining competitors

4.238 The Parties submitted that the merged entity will face significant competition following the implementation of the Proposed Transaction. In this regard, the Parties referred to existing competitors and, in particular, Celtic Linen which is the main competitor of the Parties in the healthcare sector. In support of this argument, the Parties referred to Berendsen's recent loss of some of its [...] healthcare customers to Celtic Linen.⁴⁷¹ The Parties were of the view that the Commission downplayed the competitive constraint that Celtic Linen will exercise in the healthcare market post-merger.⁴⁷²

⁴⁶⁰ The Parties' Response, paragraphs 4.2.67 to 4.2.68

⁴⁶¹ The Parties' Response, paragraph 4.2.69

⁴⁶² Minute of meeting, 1 February 2019

⁴⁶³ Kings Laundry indicated that it [...]. See Kings Laundry's response to question 10 of the First RFI.

⁴⁶⁴ See paragraph 4.273 below.

⁴⁶⁵ For example, see page 2 of the document titled [...] provided by Berendsen in response to question 9 of the First RFI.

⁴⁶⁶ The Parties' Letter 4 June 2019, paragraph 10.

⁴⁶⁷ The Parties' Response, paragraphs 4.2.57 to 4.2.63 and 4.2.67 to 4.2.69 and the Frontier Economics Report, paragraph 4.11

⁴⁶⁸ The Parties' Response, paragraphs 4.2.64 to 4.2.66, and Frontier Economics Report, paragraphs 4.2.c and 4.8 to 4.24

⁴⁶⁹ Frontier Economics Report, Paragraph 4.6 b

⁴⁷⁰ DotEcon was contracted to address specific points raised by the Parties in their written and oral submissions.

⁴⁷¹ More specifically, Berendsen noted that in 2017 and 2018 it lost contracts with [...] to Celtic Linen.

⁴⁷² Parties' Response, paragraphs 4.2.79 to 4.2.91.

4.239 In this regard, in the Report on Celtic Linen, the Parties argued that Celtic Linen acts as a strong competitive force in the supply of outsourced flat linen rental and maintenance services to healthcare customers in the State and included the following arguments:

- the Parties noted that it is imperative to consider Celtic Linen’s position in light of the fact that it successfully exited the examinership process. The Parties noted that *“it is inconsistent with the objective of the statutory regime and more specifically the process itself to consider that exiting examinership demonstrates a weakness in the financial position of a company”*;⁴⁷³
- the Parties referenced the IER report and the initiatives identified which should positively impact the company’s commercial prospects following examinership, e.g., a new experienced leadership team; acquisition of new healthcare contracts, the disposal of non-core services, among others;⁴⁷⁴
- the Parties referred to Celtic Linen’s investors Causeway Capital and noted that Celtic Linen ultimately has significant financial backing from extremely credible institutions;⁴⁷⁵
- the Parties referred to Celtic Linen’s latest financial statements and noted that Celtic Linen made a marked improvement on its trading performance compared to the previous financial year;⁴⁷⁶
- the Parties referred to Celtic Linen’s recent investments and restructuring efforts, e.g., the outsourcing of logistics, investments in equipment, textiles and systems, acquisition of Millbrook Linen, among others.⁴⁷⁷ Finally, the Parties referred to [...] healthcare contracts⁴⁷⁸ which Berendsen bid for and lost to Celtic Linen since June 2017 and noted that they expect that Berendsen was the [...] bidder in each of the tenders for those healthcare customer contracts.⁴⁷⁹ Ultimately, the Parties indicated that their view is that it is clear that not only is Celtic Linen an effective competitor of Berendsen in providing services to healthcare customers, but it is also Berendsen’s closest competitor in this customer segment and thus, would clearly exercise a significant competitive constraint on the merged entity post-transaction.

Assessment of the likely effect on price and/or quality

4.240 The Parties claim that, post-merger, the Parties *“..will only be incentivised to raise prices if there is a sufficient diversion between Kings Laundry and Berendsen.”* The Parties argue that this diversion is low, and so *“..we consider that the Parties are unlikely to have any incentive to raise their prices post-merger.”*⁴⁸⁰

⁴⁷³ See paragraph 8 in the Report on Celtic Linen.

⁴⁷⁴ See Section B and specifically paragraph 11 in the Report on Celtic Linen.

⁴⁷⁵ See paragraph 14 to 19 in the Report on Celtic Linen.

⁴⁷⁶ See paragraph 20 and 21 in the Report on Celtic Linen.

⁴⁷⁷ See paragraph 23 to 25 in the Report on Celtic Linen.

⁴⁷⁸ These contracts are as follows: [...].

⁴⁷⁹ See paragraph 27 in the Report on Celtic Linen.

⁴⁸⁰ Frontier Economics Report, paragraph 4.41

4.241 The Parties argued that, in its Assessment, the Commission erred in its evaluation of the merged entity's incentive to increase prices in the healthcare market by *"incorrectly estimating the price differential and mistakenly assuming the mere existence of a price differential is proof of incentive to increase price,"*⁴⁸¹ and that it failed to demonstrate that Celtic Linen would have both the incentive and the ability to follow an increase in price by the merged entity.

Likelihood of new entry

4.242 The Parties are of the view that the merged entity will face a credible threat of entry or expansion. In this regard, the Parties argued that entry or expansion from: (i) linen laundries currently having minimal operations in the healthcare sector and in particular, OCL; (ii) former providers of flat linen rental and maintenance services to healthcare customers (e.g., CWS-boco); (iii) linen laundries operating in the healthcare sector in Northern Ireland (e.g., Lilliput); (iv) linen laundries currently only servicing the hospitality sector in the State; and (v) laundries providing textile rental and maintenance services (except for flat linen) is credible.⁴⁸² In the Parties' view, these potential developments would pose a significant constraint on the merged entity's ability to increase prices following the implementation of the Proposed Transaction. The Parties also expressed a view that the Commission was inconsistent in its Assessment in its reliance on evidence and data by citing various barriers to entry and expansion that apply to competitors such as OCL, but not to Kings Laundry.⁴⁸³

4.243 The Parties argued that providers of flat linen rental and maintenance services to hospitality customers in the State could enter the healthcare market within a relatively short period of time and without significant investment.⁴⁸⁴

4.244 The Parties referred to Lilliput and noted that it was a credible potential competitor in the healthcare market due to its significant experience providing such services to the NHS in Northern Ireland (e.g., the Royal Victoria Hospital in Belfast).⁴⁸⁵

4.245 The Parties claimed that they faced a credible threat of entry and expansion from *"existing healthcare players who could expand their operations"*.⁴⁸⁶ In this regard, the Parties specifically referenced OCL and Linencare and noted that these players already provide a small amount of flat linen to healthcare customers, i.e., nursing homes, and that these competitors could further expand their operations to hospital customers. The Parties also proposed that such competitors are not hindered by capacity constraints. In this regard, the Parties were of the view that the Commission has not placed sufficient weight on [...] expressed intention to expand in the healthcare market and [...] intention to serve nursing homes.⁴⁸⁷ In addition, the parties suggested that CWS-boco - which provides other services to healthcare customers (e.g., scrub suit maintenance) - could easily expand into the healthcare market.

⁴⁸¹ Parties' Response, paragraphs 4.2.70 to 4.2.78 and Frontier Economics Report, paragraphs 4.2.d, and 4.25 to 4.42

⁴⁸² See page 27 of the Merger Notification Form and paragraphs 6.3 to 6.5 of the Frontier Economics Report.

⁴⁸³ Parties' Response, paragraphs 4.2.103 to 4.2.114

⁴⁸⁴ See section 5.3 of the Merger Notification Form.

⁴⁸⁵ See section 5.3 in the Merger Notification Form.

⁴⁸⁶ See section 5.3 in the Merger Notification Form.

⁴⁸⁷ Parties' Response, Paragraphs 4.211 to 4.214 and Frontier Economic Report, paragraph 6.5.



- 4.246 During a meeting with the Commission, Berendsen provided its views on the importance of experience and reputation in the supply of flat linen rental and maintenance services to healthcare customers in the State.⁴⁸⁸ Berendsen considered that the healthcare customer sector is very different to hospitality and more challenging to enter without previous experience, reputation, etc. It was noted by Berendsen that references are quite important in respect of the healthcare sector and that large organisations want assurance that the laundry operations are safe and reputable.
- 4.247 In addition, Berendsen provided the Commission with a list of potential competitors or new entrants that Berendsen considered may start providing flat linen rental and maintenance services to healthcare customers in the State in the next 2 to 3 years, i.e., Johnsons Services Group; K-Bro Linen Inc.; CWS-boco; Lindstrom; Alisco Inc.; Salesianer; and Cintas Corporation.⁴⁸⁹ Berendsen expressed a view that such entry could occur through either the acquisition of an existing business or greenfield entry as both options represent viable opportunities for entry. However, Berendsen did not provide any supporting documents or evidence in relation to the timeliness, likelihood or sufficiency of entry by any of these linen laundries.
- 4.248 In respect of the specific costs associated with the healthcare sector, Kings Laundry indicated⁴⁹⁰ to the Commission that some level of investment is required when considering an expansion into healthcare sector including:
- a) healthcare sector specific equipment (e.g., ironing machines for scrub suits);
 - b) protective clothing for the laundry's staff;
 - c) staff training; and
 - d) costs associated with obtaining health & safety management and cleanliness standards e.g. swab testing.
- 4.249 Kings Laundry informed the Commission that it is not currently aware of any potential new entrant in the supply of flat linen rental and maintenance services to healthcare customers in the State. In addition, Kings Laundry noted that such entry is likely to be facilitated by the acquisition of an existing supplier or by greenfield entry. Finally, Kings Laundry noted that entry is less likely in the supply of flat linen rental and maintenance services to healthcare customers than hospitality customers in the State due to the need for accreditations when supplying the healthcare customers.⁴⁹¹

⁴⁸⁸ Commission's meeting with Berendsen on 30 January 2019, see page 4 of minutes of meeting with Berendsen of 30 January 2019.

⁴⁸⁹ See response to question 22 in Berendsen's response to the Second RFI.

⁴⁹⁰ See Kings Laundry clarifications in relation to its response to Question 21 of the First RFI.

⁴⁹¹ See response to question 19 in Kings Laundry's response to the Second RFI.

Countervailing Buyer Power

4.250 The Parties considered that customers in the healthcare sector (e.g., the HSE) are highly sophisticated buyers and have significant buyer power and can credibly avail of the following options in response to the merged entity's attempt to increase prices:⁴⁹²

- a) switch to alternative suppliers of flat linen rental and maintenance services; or
- b) switch to self-supply via OPLs.

4.251 In the Report on OPLs, the Parties noted the precedent of NCAs (including the Commission) considering the option of self-supply during the assessment of competition.⁴⁹³ The Parties noted that a number of customers in the healthcare sector currently self-supply flat linen rental and maintenance services. In relation to customers that do not have OPLs, the Parties reiterated that the costs associated with setting up an OPL are relatively small. The Parties noted that customers can avail of second hand machinery, citing providers and purchasers of such machinery in the State. The possibility to source equipment from suppliers located outside the State was also highlighted. Thus, the Parties were of the view that customers in the healthcare sector that are outsourcing flat linen rental and maintenance services can exercise significant CBP by threatening to switch to self-supply.

4.252 The Parties noted that barriers to switching supplier are relatively low. The Parties referred to the relatively short durations of their contracts with customers⁴⁹⁴ and argued that the costs of switching suppliers at the end of the contract period are low.

Other factors

4.253 The Parties alleged that, in its Assessment, the Commission ignored and/or failed to give sufficient weight to views expressed by healthcare customers and competitors. The Parties argued that third parties do not have concerns regarding the Proposed Transaction.⁴⁹⁵

4.254 Finally, the Parties stated that in its Assessment the Commission misunderstood the context and/or meaning of their internal documents.⁴⁹⁶

⁴⁹² See page 27 of the Merger Notification Form, paragraphs 4.2.92 to 4.2.94 of the Parties' Response and paragraphs 6.8 to 6.9 of the Frontier Economics Report.

⁴⁹³ The Parties referred to paragraph 7.1 of the Commission's Merger Guidelines, the OFT's decision in case ME/3633/08 - [Fishers Services Ltd / The Sunlight Service Group](#) (the activities of the parties' in this transaction overlapped with respect of the supply of linen rental and laundry services in Scotland), paragraph 4.1 of the Authority's Decision in case [COM/107/02 Investigation into TicketMaster fees & exclusivity arrangements \(2005\)](#), and the Commission's determination in case [M/15/026 Baxter Healthcare / Fannin Compounding](#).

⁴⁹⁴ The Parties noted that contracts with healthcare customers are typically between one and three years in length.

⁴⁹⁵ Parties' Response, paragraphs 4.2.95 to 4.2.101 and Frontier Economics Report, paragraphs 1.3.e, 4.3, 7.4 and 7.5

⁴⁹⁶ The Parties' Response, paragraphs 4.2.32 to 4.2.53



Views of Competitors in the Healthcare Sector

4.255 Two⁴⁹⁷ out of the three⁴⁹⁸ competitors contacted by the Commission⁴⁹⁹ which currently provide outsourced flat linen rental and maintenance services to healthcare customers in the State responded to the Commission's query regarding the competitive effects of the Proposed Transaction in response to the First Competitor Questionnaire.⁵⁰⁰ One⁵⁰¹ Competitor indicated to the Commission that the merger will result in a price increase across the whole "rental market", however they noted "*prices are currently slightly lower than what they should be anyway*".⁵⁰² The remaining competitor noted that the Proposed Transaction will reduce competition for the merged entity's customers.⁵⁰³

Views of Customers and Self-suppliers in the Healthcare Sector

4.256 Eight Customers from the healthcare sector which were contacted directly by the Commission provided views on the parties' closest competitors and the impact of the Proposed Transaction in the healthcare market.⁵⁰⁴

4.257 In relation to closeness of competition, Celtic Linen was consistently identified as the closest competitor to the Parties. [...] was of the view that Celtic Linen was the main competitor of Berendsen while [...] noted that in its last tender won by Kings Laundry, Berendsen came second and Celtic Linen third.

4.258 In relation to the impact of the Proposed Transaction on their ability to purchase their linen services, Customers from the healthcare sector indicated that the main concern relates to a reduction in competition and in particular for some healthcare customers the fact that the market is going from 3 to 2 service providers.⁵⁰⁵ A public healthcare customer noted that Kings Laundry was the third largest player in the healthcare market and post-transaction there will just be two remaining players.⁵⁰⁶ In relation to the question of the impact of the Proposed Transaction on the price of outsourced flat linen rental and maintenance services, of six healthcare Customers who responded, three Customers said they thought prices would go up and two mentioned there would be less competition. One Customer said that if the Parties were to try imposing higher prices, they would need to meet and negotiate terms and conditions of provided services and also look for potential alternative providers.⁵⁰⁷ The Commission notes that the Customers it contacted directly were those identified by the parties as being of most significance to their business, and it would therefore emphasise the weight of their opinions.

⁴⁹⁷ Please see [...] response and [...] response to First Competitor Questionnaire.

⁴⁹⁸ The Commission notes that the remaining competitor which did not provide views on this issue noted that it had no knowledge of the likely impact of the Proposed Transaction on competition. Please see [...] response to First Competitor Questionnaire.

⁴⁹⁹ The Commission notes that it contacted all linen laundries offering services in the healthcare market, including those providing limited services to a limited customer group (e.g., providing service to a small number of nursing homes).

⁵⁰⁰ The Commission notes that such competitors provided a response in respect of the competitive effects of the Proposed Transaction in relation to the supply of flat linen rental and maintenance services in the State and did not segment their answer in respect of healthcare and hospitality.

⁵⁰¹ The Commission notes that this competitor intends to cease its linen rental operations shortly.

⁵⁰² See [...] response to First Competitor Questionnaire.

⁵⁰³ See [...] response to First Competitor Questionnaire.

⁵⁰⁴ See paragraphs 10.29 to 10.30 below.

⁵⁰⁵ See paragraphs 10.31 to 10.36 below.

⁵⁰⁶ See phone call record with [...] dated 21 January 2019.

⁵⁰⁷ See phone call record with [...] dated 4 October 2018.



- 4.259 A number of self-suppliers from the healthcare sector that expressed views on the impact of the Proposed Transaction were of the view that the Transaction will have no impact in the healthcare market.⁵⁰⁸
- 4.260 The Commission received no Third Party submissions. The lack of Third Party submissions does not in itself suggest that third parties have no concerns about the Proposed Transaction. In this regard, the Commission notes that only 22% of the Amárach Survey respondents were aware of the Proposed Transaction.⁵⁰⁹
- 4.261 The Amárach Survey found that over two thirds (67%) of customers from the healthcare sector indicated they thought that the Proposed Transaction would have a neutral impact, with 8% saying a positive impact and 7% saying it would have a negative impact.⁵¹⁰

Views of the Commission

- 4.262 The assessment of the competitive effects of the Proposed Transaction requires the identification of any relevant theories of harm (i.e., how the Proposed Transaction could result in an SLC) and an analysis of those theories of harm through an examination of the available evidence.
- 4.263 In this case, the Commission focused on two theories of harm as part of its assessment of the likely competitive impact of the Proposed Transaction in the healthcare market in the State: (i) unilateral effects; and (ii) coordinated effects (discussed in paragraphs 4.379 to 4.386 below).

Unilateral Effects

- 4.264 In paragraphs 4.27 to 4.52, the Commission set out its overall approach to the assessment of competition, and this provides a context for further analysis. In considering the likelihood of unilateral effects occurring following the implementation of the Proposed Transaction, the Commission assessed a number of factors that are discussed in turn below:
- a) competitive pressure exerted by Kings Laundry on Berendsen and Celtic Linen before the Proposed Transaction (discussed in paragraphs 4.265 to 4.274 below);
 - b) closeness of competition between the Parties (discussed in paragraphs 4.275 to 4.304 below)
 - c) constraints from remaining competitors of the parties (discussed in paragraphs 4.305 to 4.313 below);

⁵⁰⁸ See paragraphs 10.43 to 10.44 below.

⁵⁰⁹ Slide 56 of the Amárach Survey.

⁵¹⁰ See slide 58 of the Amárach Survey. Please note that just 22% of healthcare respondents said that they were aware of the Proposed Transaction (slide 56 of the Amárach Survey)

- d) assessment of the likely effects of the Proposed Transaction on price and/or quality (discussed in paragraphs 4.314 to 4.331 below);
- e) likelihood of new entry and/or expansion (discussed in paragraphs 4.332 to 4.352 below); and
- f) countervailing buyer power (discussed in paragraphs 4.353 to 4.377 below).

Pre-merger competitive pressure⁵¹¹ exerted by Kings Laundry

Kings Laundry's importance as a competitive force in the healthcare market

4.265 The Commission's view is that Kings Laundry is an important and effective competitor in the healthcare market. First, since Kings Laundry commenced operating as a linen laundry, it has competed vigorously in order to grow its customer base. While the Parties claimed that Kings Laundry's primary focus has been the hospitality sector, the Commission observes that Kings Laundry has participated in tenders issued by some of the largest private healthcare organisations⁵¹² and has provided services to private healthcare customers for over 10 years.⁵¹³ As noted in paragraph 4.218 above, Kings Laundry has been steadily increasing its market share and currently provides services to large private healthcare organisations including [...]. In this regard, information provided by Kings Laundry indicates that it was successful in [...] out of [...] attempts to win healthcare customers ([...])⁵¹⁴. The Commission also points out that Kings Laundry managed to maintain some of its largest healthcare customers such as [...]⁵¹⁵ for over 5 years.⁵¹⁶ Furthermore, as noted in paragraph 4.26 above, evidence gathered during the Commission's investigation indicates that there is a realistic prospect of Kings Laundry making further expansion into the healthcare sector in line with its current growth trajectory. This evidence indicates that Kings Laundry is an important and significant competitive force in the healthcare market.

4.266 Kings Laundry's competitive strategy in the healthcare sector appears to be focussed on providing high service quality via a dedicated linen system which, according to Berendsen, "[...]"⁵¹⁷. The Commission observes that Kings Laundry attempts to differentiate itself from its competitors by referring to the dedicated linen system in [...].⁵¹⁸

4.267 The Commission notes the following statements on Kings Laundry's website:

⁵¹¹ See paragraphs 4.7 to 4.13 for an explanation of how the Commission treats evidence pre- and post- merger notification.

⁵¹² In this regard, the Commission notes [...] view that at the time of the ITT issued by [...] (i.e., in 2016), Kings Laundry sought actively to expand into the healthcare sector.

⁵¹³ During the Commission's meeting with Kings Laundry on 1 February 2019, Kings Laundry stated that it started to provide outsourced flat linen rental and maintenance services to [...] in 2007.

⁵¹⁴ Kings Laundry's response to question 25 of the First RFI.

⁵¹⁵ During the review period, the Commission understands that Kings Laundry lost its contract with [...]. This is further confirmation of the 3 player nature of the healthcare market.

⁵¹⁶ Kings Laundry's response to question 22 of the Second RFI.

⁵¹⁷ Stated by Berendsen during the Commission's meeting with Berendsen on 30 January 2019, see page 3 of minutes of meeting with Berendsen of 30 January 2019. The Commission notes that the accuracy of these minutes was agreed with the parties.

⁵¹⁸ See [...]. This [...] was provided to the Commission in response to question 27 of the First RFI.



Figure 9: Kings Laundry's marketing of its outsourced flat linen rental and maintenance services to healthcare customers⁵¹⁹

We believe our solutions provide customers with the following benefits:

- An innovative textile product range which concentrates on promoting comfort, protection and cost effectiveness.
- Clear accountability for service delivery.
- Best value for money.
- Innovative services to add value.
- A proven track record based on over 10 year's service to the laundry industry and the healthcare sectors.
- Continually achieving high scores for laundry services.
- Financial stability for long term investment.
- Substantial service support.
- Committed to quality improvement and infection control.
- Unique contingency support.
- ISO 9001:2008 approved.
- All laundry processes meet the HSG (95) 18 Standard.

Figure 10: Kings Laundry's marketing of its dedicated linen system⁵²⁰ [REDACTED]

- 4.268 The Commission accepts that Kings Laundry may be [...]. The Commission however notes that Kings Laundry's success in building market share in the healthcare market has been at least partly down to the way in which it has marketed itself. Customers perceive Kings Laundry as innovative and as providing high quality service.
- 4.269 The Commission's investigation revealed that Kings Laundry is known for providing outsourced flat linen rental and maintenance services to healthcare customers. In this regard, [...] noted that it invited Kings Laundry to participate in its ITT in 2018 because "*Kings Laundry are already working with around [...] private hospitals including the [...] and [...]*".⁵²¹ In the Commission's view, customers like [...] are likely to be well informed about alternative suppliers given that they have gone through the process of issuing ITTs/RFQs recently. This can be contrasted with the Amárach Survey's findings on supplier awareness, which were based on customers who had rolled over existing contracts without contacting alternative suppliers.
- 4.270 Kings Laundry has demonstrated a willingness to invest in modern equipment which allows it to achieve greater efficiencies.⁵²² In this regard, the Commission notes that in

⁵¹⁹ See <https://www.kingslaundry.com/healthcare-linen-rental/>. Accessed on 27 May 2019.

⁵²⁰ Page 4 of the Kings Laundry's [...]. This [...] was provided to the Commission in response to question 27 of the First RFI. Furthermore, on 27 February 2018 Kings Laundry indicated that it was the [...] that Kings Laundry participated in a formal tender process for the [...].

⁵²¹ See phone call record with [...] dated 7 May 2019.

⁵²² During the Commission's meeting with Kings Laundry on 1 February 2019, Kings Laundry noted that its Cork facility is [...].



2016 Kings Laundry opened its new facility in Cork having invested €[...] in total.⁵²³ Berendsen, in its internal documents that describe [...], notes the following in relation to [...]:

“[...]”⁵²⁴

4.271 Whilst this facility predominantly services Kings Laundry’s [...] ⁵²⁵, [...] ⁵²⁶].

4.272 Finally, the importance of Kings Laundry as a competitive force in the healthcare market is further supported by evidence from Berendsen’s internal documents. In particular, the Commission refers to the following statements and figures:

a) “[...]”⁵²⁷; and

b) “[...]”.⁵²⁸

Figure 11: Berendsen's internal document on [...] ⁵²⁹ [REDACTED]

Figure 12: Berendsen's internal document on [...] ⁵³⁰ [REDACTED]

4.273 The Commission notes in its counterfactual that, absent the merger, the healthcare market is a market with 3 significant players. The Commission also observes that Berendsen itself, in pre-merger notification internal documents considers [...] as shown in Figure 13 and Figure 14.

Figure 13: Berendsen's internal document on [...] (I) ⁵³¹ [REDACTED]

Figure 14: Berendsen's internal document on [...] (II) ⁵³² [REDACTED]

⁵²³ In response to question 13 of the First RFI, Kings Laundry noted that initial investment was approximately €[...] with additional €[...] spent in [...].

⁵²⁴ Internal email between Berendsen and Elis titled [...], dated 2 February 2018 provided by Berendsen in response to question 1 of the First RFI.

⁵²⁵ Kings Laundry noted that its Cork facility services [...]. See Kings Laundry’s response to the Commission query dated 15 February 2019.

⁵²⁶ While Kings Laundry specifically referred to private healthcare customers, the Commission is of the view that Kings Laundry would be equally well placed to cater for public healthcare customers.

⁵²⁷ Internal email between Berendsen and Elis titled [...], dated 2 February 2018 provided by Berendsen in response to question 1 of the First RFI.

⁵²⁸ Page 1 of the Document titled [...] provided by Berendsen in response to question 9 of the First RFI.

⁵²⁹ Slide 8 of the Document titled [...], dated 23 March 2018 submitted by Berendsen in Appendix G of the Merger Notification Form.

⁵³⁰ Slide 24 of the Document titled [...], dated 23 March 2018 submitted by Berendsen in Appendix G of the Merger Notification Form. Redaction was made by the parties.

⁵³¹ Slide 15 of the document titled [...] provided by Berendsen in response to question 9 of the First RFI. It should be noted that in slide 13 of this document, [...].

⁵³² Slide 26 titled [...] provided by Berendsen in response to question 9 of the First RFI.



- 4.274 The Proposed Transaction would see Kings Laundry, currently an expanding innovative competitor in the healthcare market, being incorporated into Berendsen, the largest supplier. In the Commission's view, following the implementation of the Proposed Transaction, healthcare customers that can currently invite three bidders when tendering for services would no longer benefit from the competitive pressure exerted by Kings Laundry's presence as an independent and strong competitor in the market.

Closeness of competition between the Parties

- 4.275 Paragraph 4.19 of the Commission's Merger Guidelines states "[A]ll things being equal, a merger between close competitors (i.e., competitors engaged in intense competition)⁵³³ will remove a strong competitive constraint and hence be more likely to raise competition concerns than a merger between distant competitors."
- 4.276 The healthcare market is characterised by tenders in which bidders face significant uncertainty over the offers made by rival bidders and the risk of losing out to more attractive offers from competitors. In these circumstances, facing more rival bidders typically increases, for any particular bid, the probability that the buyer will receive a preferable rival offer, which means that bidders will tend to bid more aggressively (i.e. closer to cost). Thus, the question is not, as the parties argued, only whether the Parties were the first and second choice in the observed tenders in the past (although this is also an important piece of evidence in measuring closeness of competition). Rather, the relevant question is whether the Parties are perceived to be strong and important competitors (in terms of their competitive offering) to have a chance of winning, (i.e., they are considered to be good alternatives by customers) and thus, whether bid participation (including perceived participation) of Kings Laundry and/or Berendsen affects bidding incentives of other competitors.⁵³⁴ As well as considering past performance, the Commission's analysis of the effects of the merger must also be forward-looking, and must take into account the effect of reducing the number of significant competitors in the healthcare market from 3 to 2.
- 4.277 In assessing the closeness of competition between Berendsen and Kings Laundry the Commission has examined the following evidence:
- a) the views of the Parties (summarised in paragraph 4.235 to 4.237 above);
 - b) the Parties' internal documents (discussed in paragraph 4.235 above);
 - c) the Parties' submissions (discussed in paragraphs 4.236 to 4.237 above);
 - d) the views of third parties (summarised in paragraphs 4.255 to 4.261 above);
 - e) analysis of tendering data (discussed in paragraphs 4.278 to 4.287 below);
 - f) analysis of the Parties' customer loss data (discussed in paragraphs 4.288 to 4.297 below); and

⁵³³ Footnote 9 of the Commission's Merger Guidelines states that "In a differentiated product market the most intense competition will occur between the most substitutable products or services."

⁵³⁴ As confirmed by DotEcon, see slide 9 of the DotEcon Report.

g) the Amárach Survey (discussed in paragraphs 4.298 to 4.301 below).

Tender participation data

- 4.278 The Commission notes that the Parties and Competitors provided a relatively limited number of instances of ITTs issued by healthcare customers in the period from 1 January 2014 to 30 June 2018. Furthermore, tender participation should be considered in a context where the HSE has not issued any ITTs since 2014, but has instead rolled over existing contracts.⁵³⁵ The analysis of past tender participation data is therefore based on a small dataset, and at best only gives an indication of the closeness of competition.⁵³⁶
- 4.279 It should also be noted that the Commission's analysis includes only tenders where: a) at least two competitors confirmed their participation; or b) the list of participants was provided by Customers interviewed by the Commission. Thus, analysis excludes healthcare customer procurement attempts where the Commission was unable to unambiguously verify the identities of participating competitors.
- 4.280 At the outset, the Commission notes that some of the current largest Kings Laundry's healthcare customers⁵³⁷ (in terms of turnover) were gained by Kings Laundry prior to 1 January 2014 (i.e., the date from which tender participation data is available). Thus, Kings Laundry's participation and success in tenders does not fully reflect its position in the healthcare market. In this regard, information provided by Kings Laundry indicates that it was successful in [...] out of [...] healthcare tenders ([...])%.⁵³⁸ As far as Kings Laundry is aware, they competed against Berendsen in [...] instances, winning [...]. Kings Laundry believes it competed against Celtic Linen in [...] instances, winning [...].
- 4.281 Table 14 below shows that Berendsen most frequently faced Celtic Linen in tenders for the supply of outsourced flat linen rental and maintenance services issued by healthcare customers. In the period from 1 January 2014 to 30 June 2018 Berendsen participated in [...] tenders, with Celtic Linen participating in [...] of those tenders, while Kings Laundry participated in [...] of those tenders (i.e., [...])%.

Table 14: Bidders facing Berendsen – the healthcare market 2014 – 30 June 2018 [REDACTED]

Linen laundry	Number of bids	Frequency of participation
Celtic Linen	[...]	[...]%
Kings Laundry	[...]	[...]%
Other	[...]	[...]%
Total	[...]	-

Source: The Commission's analysis using information provided by the parties and parties' competitors.

⁵³⁵ See phone call record with [...] dated 7 May 2019.

⁵³⁶ In this regard, the Commission notes that some healthcare customers tend to extend their existing contract with service providers. In addition, some of the contracts were acquired outside the Commission's reference period 2014 to 30 June 2018.

⁵³⁷ [...].

⁵³⁸ Kings Laundry's response to question 25 of the First RFI.



- 4.282 Similar analysis in respect of competitors facing Kings Laundry when it bids for the supply of outsourced flat linen rental and maintenance services in the healthcare market shows that Berendsen and Celtic Linen are its most frequent competitors. In the period from 1 January 2014 to 30 June 2018 Kings Laundry participated in [...] tenders, with Berendsen and Celtic Linen [...] of those tenders.

Table 15: Bidders facing Kings Laundry – the healthcare market, 2014 - 30 June 2018 [✂️
REDACTED]

Linen laundry	Number of bids	Frequency of participation
Berendsen	[...]	[...]%
Celtic Linen	[...]	[...]%
CWS-boco⁵³⁹	[...]	[...]%
Total	[...]	-

Source: The Commission's analysis using information provided by the parties and parties' competitors.

- 4.283 In sum, the analyses of the Parties' bids for tenders issued by healthcare customers show that: (i) Kings Laundry has actively participated in tenders issued by private healthcare sector customers, in many of which Kings Laundry was competing on the understanding that it was bidding against Berendsen; (ii) Celtic Linen is Berendsen's most frequent competitor in ITTs; and (iii) those tenders where the parties compete (and will therefore suffer from a loss of competition) have a concentrated market structure, with all tenders having 3 or less bidders. Thus, in tenders where there were 3 bidders pre-transaction, the Proposed Transaction will have a very significant impact on alternatives available to healthcare sector customers. Although the Commission has unambiguously identified only two tenders that had 3 bidders during the examined period, it notes that many healthcare contracts during this period have been rolled-over rather than re-tendered. Having regard to the relevant counterfactual set out in paragraph 4.26 above that Kings Laundry would expand its activities in the healthcare market, the Commission would expect that, absent the Proposed Transaction, the number of tenders with 3 bidders is likely to increase.⁵⁴⁰
- 4.284 However, participation alone is an incomplete indicator of competitive constraint in tenders. The Commission considers that the importance of participation by each linen laundry should also be interpreted in light of its assumptions regarding who it is bidding against, and also in light of its wins. A firm that participates less often but wins frequently is perceived to be a stronger competitor who might be expected to participate in future tenders. The analysis of win rates therefore provides evidence of both the importance of the competitive constraints that the Parties exert on one another, and that is exercised by remaining competitors.
- 4.285 Table 16 and Table 17 below report win rates in tenders for outsourced flat linen rental and maintenance services in the healthcare sector that Berendsen and Kings Laundry participated in during the period from 1 January 2014 to 30 June 2018.

⁵³⁹ This bid was made before CWS-boco stopped providing outsourced flat linen rental and maintenance services.

⁵⁴⁰ For example, as noted in footnote 207, Kings Laundry participated in [...].



4.286 Table 16 illustrates that Berendsen won [...] out of [...] tenders in which it participated ([...]). Celtic Linen systematically competed against Berendsen and won [...] of tenders in which Berendsen also submitted bids while Kings Laundry won [...] of those tenders ([...]). Table 17 illustrates that Kings Laundry won [...] out of [...] tenders in which it participated ([...]) with Celtic Linen winning [...] tender ([...]).

Table 16: Winners in tenders for flat linen rental and maintenance services in the healthcare market that Berendsen participated in, 2014 – 30 June 2018 [REDACTED]

Linen laundry	Number of wins	Win rate
Berendsen	[...]	[...]
Celtic Linen	[...]	[...]
Kings Laundry	[...]	[...]
Number of tenders	[...]	-

Source: The Commission's analysis using information provided by the parties and parties' competitors.

Table 17: Winners in tenders for flat linen rental and maintenance services in the healthcare market that Kings Laundry participated in, 2014 – 30 June 2018 [REDACTED]

Linen laundry	Number of wins	Win rate
Berendsen	[...]	[...]
Celtic Linen	[...]	[...]
Kings Laundry	[...]	[...]
CWS-boco ⁵⁴¹	[...]	[...]
Number of tenders	[...]	-

Source: The Commission's analysis using information provided by the parties and parties' competitors.

4.287 In summary, the Parties are part of a small number of three linen laundries that also includes Celtic Linen competing against each other for business from healthcare customers. The competitive interactions in these tenders show that Berendsen won [...] of the tenders that it participated in, whilst Kings Laundry exercised significant competitive pressure on both Celtic and Berendsen by successfully competing and winning [...] out of [...] tenders in which all 3 linen laundries submitted bids. In this regard, as highlighted in paragraph 4.280 above, information provided by Kings Laundry indicates that it was successful in [...] out of [...] attempts to win healthcare customers ([...]).⁵⁴² Finally, the Commission would note that jointly Berendsen and Kings Laundry accounted for a [...] share of won tenders ([...] out of [...] or [...]) which further indicates the strength of the market power of the merged entity, and the increasing asymmetry in the market if the transaction goes ahead.

Analysis of the Parties' customer loss data

4.288 The Commission notes that the Parties provided a relatively limited number of instances where their healthcare customers switched to another supplier in the period from 1

⁵⁴¹ This bid was made before CWS-boco stopped providing flat linen rental and maintenance services.

⁵⁴² Kings Laundry's response to question 25 of the First RFI. For 10 of these attempts, the Commission could not verify whether there were any other participating competitors. Thus, they were excluded from the Commission's tendering analysis.

January 2014 to 30 June 2018. The analysis of customer loss data is based on a small dataset.

4.289 The extent to which the Parties have won or lost customers between each other provides a useful (if limited) indicator of the closeness of competition between them.⁵⁴³ The Commission explored switching patterns over time using information provided by the Parties. Both Parties provided a list of customers that switched from them in the period from 1 January 2014 to 30 June 2018. The Commission estimated switching ratios or diversion ratios between the Parties in terms of: (i) the number of switching customers (“diversion ratio”)⁵⁴⁴ and (ii) lost contract value of switching customers (“weighted diversion ratio”).⁵⁴⁵

4.290 In performing this analysis, the Commission included only customers for which the parties were able to identify to whom those customers switched (e.g., name of competitor or OPL). The Commission also excluded customers that had become bankrupt (i.e., no longer require flat linen rental and maintenance services) and customers who received service cancellation letters (as opposed to switching on their own initiative).

4.291 Based on the analysis of Berendsen’s healthcare customer loss data for flat linen rental and maintenance services, the Commission found that Celtic Linen was the closest competitor to Berendsen. In particular, Table 18 indicates that Celtic Linen won [...] of the customers and gained [...] of the turnover lost by Berendsen during the examined period.

Table 18: Berendsen's diversion ratios in the healthcare market, 2014 - 30 June 2018 [✂
REDACTED]

		2014		2015		2016		2017		Jan-Jun 2018		Total	
	Linen Laundry	Nr.	%	Nr.	%	Nr.	%	Nr.	%	Nr.	%	Nr.	%
In terms of customer numbers	Kings Laundry	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%
	Celtic Linen	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%
	Other	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%
	OPL	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%
	Total	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%	[...]	[...]%

⁵⁴³ In this regard see paragraph 4.20 of the Commission’s Merger Guidelines.

⁵⁴⁴ Diversion ratios were calculated by considering, on the numerator, the total number of a party’s (e.g. Berendsen) lost contracts to a certain competitor (e.g., Kings Laundry) within a certain year (e.g. 2017) and on the denominator, the total number of a party’s contracts lost within the same year.

⁵⁴⁵ Weighted diversion ratios were calculated by considering, on the numerator, the total number of a party’s (e.g. Berendsen) lost contracts to a certain competitor (e.g. Kings Laundry) times their total value within a certain year (e.g. 2017) and on the denominator, the total number of a party’s contracts lost times their total value for the same year.

		2014		2015		2016		2017		Jan-Jun 2018		Total	
		€	%	€	%	€	%	€	%	€	%	€	%
In terms of contract value (in €000s)	Kings Laundry	[...]	[...] %]	[...]	[...] %]	[...]	[...] %]	[...]	[...] %]	[...]	[...] %]	[...]	[...] %]
	Celtic Linen	[...]	[...] %]	[...]	[...] %]	[...]	[...] %]	[...]	[...] %]	[...]	[...] %]	[...]	[...] %]
	Other	[...]	[...] %]	[...]	[...] %]	[...]	[...] %]	[...]	[...] %]	[...]	[...] %]	[...]	[...] %]
	OPL	[...]	[...] %]	[...]	[...] %]	[...]	[...] %]	[...]	[...] %]	[...]	[...] %]	[...]	[...] %]
	Total	[...]	[...] %]	[...]	[...] %]	[...]	[...] %]	[...]	[...] %]	[...]	[...] %]	[...]	[...] %]

Source: The Commission's analysis of Berendsen's data on lost healthcare customers

4.292 The same analysis was performed using information provided by Kings Laundry. The Commission found that Berendsen exerted the strongest competitive constraint on Kings Laundry in the healthcare sector. In particular, Table 19 indicates that Berendsen won [...] of the customers lost by Kings Laundry during the examined period and gained [...] of turnover lost by Kings Laundry in the same period. In comparison, Celtic Linen won [...] of customers and [...] of turnover lost by Kings Laundry.

Table 19: Kings Laundry's diversion ratios in the healthcare market, 2014 - 30 June 2018 [REDACTED]

		2014		2015		2016		2017		Jan-Jun 2018		Total	
	Linen Laundry	Nr.	%	Nr.	%	Nr.	%	Nr.	%	Nr.	%	Nr.	%
In terms of customer numbers	Berendsen	[...]	[...] %]	[...]	[...] %]	[...]	[...] %]	[...]	[...] %]	[...]	[...] %]	[...]	[...] %]
	Celtic Linen	[...]	[...] %]	[...]	[...] %]	[...]	[...] %]	[...]	[...] %]	[...]	[...] %]	[...]	[...] %]
	Other	[...]	[...] %]	[...]	[...] %]	[...]	[...] %]	[...]	[...] %]	[...]	[...] %]	[...]	[...] %]
	OPL	[...]	[...] %]	[...]	[...] %]	[...]	[...] %]	[...]	[...] %]	[...]	[...] %]	[...]	[...] %]
	Total	[...]	[...] %]	[...]	[...] %]	[...]	[...] %]	[...]	[...] %]	[...]	[...] %]	[...]	[...] %]



		€	%	€	%	€	%	€	%	€	%	€	%
In terms of contract value (in €000s)	Berendsen	[...]	[...] %	[...]	[...] %	[...]	[...] %	[...]	[...] %	[...]	[...] %	[...]	[...] %
	Celtic Linen	[...]	[...] %	[...]	[...] %	[...]	[...] %	[...]	[...] %	[...]	[...] %	[...]	[...] %
	Other	[...]	[...] %	[...]	[...] %	[...]	[...] %	[...]	[...] %	[...]	[...] %	[...]	[...] %
	OPL	[...]	[...] %	[...]	[...] %	[...]	[...] %	[...]	[...] %	[...]	[...] %	[...]	[...] %
	Total	[...]	[...] %	[...]	[...] %	[...]	[...] %	[...]	[...] %	[...]	[...] %	[...]	[...] %

Source: The Commission's analysis of Kings Laundry's data on lost healthcare customers

- 4.293 The Commission acknowledges the value of examining the ranking performance in bids, and in calculating diversion between competitors. In the Commission's view, looking at the performance of the merging parties in past tenders provides an indication of their relative strengths, and so the extent to which their potential participation in a tender affects their bidding incentives and the bidding incentives of other bidders.
- 4.294 However, in the Commission's view, the analysis should not be limited to a question of who came first or second in previous tenders. If Berendsen and Kings Laundry were not to compete against one another in future tenders, then the competition effect of the merger would indeed be minimal. However, if they do compete, it cannot be determined beforehand who will be first, second or third, and this is why the number of participants matters, and why there is a participation effect. As the Commission has set out in its counterfactual, the most realistic scenario absent the merger is that Kings Laundry will continue to compete and will indeed expand its activities in the healthcare market, and so it is more rather than less likely that the parties will compete in the future. It is the Commission's view that its analysis of the likely effects of the merger should not be limited to an analysis of past behaviour.
- 4.295 The loss of a competitor would make a price increase significantly more risky, and thereby contribute to an upward price pressure. This risk would be mitigated only if that competitor is perceived to be too weak (in terms of its competitive offering) to have a chance of winning, or if there are so many strong remaining bidders that there is little incremental effect from an additional competitor. Neither of these conditions holds in the healthcare market.



- 4.296 To sum up, the switching data confirms that the healthcare market can be characterised as a market with 3 significant players. [...] customers and revenue lost by Berendsen was lost to Celtic Linen. On the other hand, the majority of healthcare customers and revenue lost by Kings Laundry was lost to [...]. The Parties' Response emphasised that Kings Laundry did not lose a customer to [...] since 2016.⁵⁴⁶ However, Kings Laundry [...] since 2016 (i.e. from 1 January 2017 to 30 June 2018). Thus, this time period is not informative about Kings Laundry's diversion ratios in the healthcare market and the Commission considers that it is more useful to examine the whole period over which information on customer losses was collected.
- 4.297 Kings Laundry's presence in the healthcare market exerts a significant competitive constraint on both Berendsen and Celtic Linen. In particular, the Commission notes that Kings Laundry acquired the contract for [...] from [...] in 2016 and has attempted to win the contract with [...] (one of the [...] former healthcare customers of Berendsen) in 2018.⁵⁴⁷ Other linen laundries with limited activities in the healthcare market have posed no competitive constraint on the Parties to date. As discussed in more detail in paragraphs 4.333 to 4.352 below, the Commission observed no evidence to suggest that this will change post transaction.

The Amárach Survey

- 4.298 The Amárach Survey examined the closeness of competition between linen laundries in the healthcare market.
- 4.299 When asked about the providers who they considered in tenders and negotiations, healthcare sector customers indicated that Celtic Linen, Berendsen and Kings Laundry were most likely to submit quotes or tenders. In particular the Amárach Survey results show that:
- a) two healthcare sector respondents who said that Berendsen was their previous provider and who switched, indicated that they switched to Celtic Linen, while one healthcare sector respondent who switched from Kings Laundry switched to Berendsen;⁵⁴⁸
 - b) healthcare sector respondents were asked what they would do if their supplier of flat linen rental and maintenance services raised its prices for the service by between 5% and 10% and everything else remained the same (price diversion). Of those healthcare sector respondents, 42% said they would use another linen laundry instead, and 27% would stay with their current provider. None said that they would self-supply.⁵⁴⁹ However, of those who said they would switch to another provider, when asked who they would switch to 73% said they didn't know.⁵⁵⁰

⁵⁴⁶ Paragraph 4.265.1 of the Parties Response and paragraph 4.19 b. of the Frontier Economics Report.

⁵⁴⁷ Furthermore, on 27 February 2018 Kings Laundry indicated that it was the [...]. It should also be noted that in this tender Kings Laundry was ranked [...] and Berendsen (the incumbent provider at the time) third. See phone call record with [...] dated 7 May 2019.

⁵⁴⁸ See slide 30 of the Amárach Survey.

⁵⁴⁹ See slide 52 of the Amárach Survey.

⁵⁵⁰ See slide 54 of the Amárach Survey.



- 4.300 Moreover, most healthcare sector respondents, (73%) said that they have not become aware of any new linen laundries since they last procured flat linen rental and maintenance services.⁵⁵¹
- 4.301 To conclude, although sample sizes are too small to allow the Commission to put significant weight on individual figures, the following broad findings can be drawn from the results of the Amárach Survey:
- a) Berendsen holds an influential position in the healthcare market;
 - b) Berendsen and Celtic Linen are the two main providers of flat linen rental and maintenance services to healthcare customers with the only other credible alternative being Kings Laundry; and
 - c) there is little evidence to indicate that other linen laundries are widely known in the healthcare sector.

Conclusion on closeness of competition

- 4.302 The evidence presented in paragraphs 4.275 to 4.301 above suggests that the pre-merger healthcare market is a market with 3 significant players. Celtic Linen is the main competitive constraint on Berendsen's probability of winning a tender, and Kings Laundry is a constraint on Berendsen's probability of winning a tender in tenders where both Berendsen and Kings Laundry participated. Thus, the Proposed Transaction will result in the removal of an important and significant competitor to both Berendsen and Celtic Linen and reduce the number of important and significant competitors in the healthcare market from 3 to 2.
- 4.303 In this regard, it is important to consider the degree of the healthcare market concentration in addition to the diversion ratio between the Parties when assessing the likely merger impact. The Proposed Transaction would reduce the number of credible options to healthcare customers, in a concentrated market with little choice of alternative suppliers (the choice would be the merged entity or Celtic Linen).
- 4.304 Moreover, having regard to the relevant counterfactual as set out in paragraph 4.26 above, the Proposed Transaction will result in the elimination of the expanding competitor in the healthcare market, which was perceived by Berendsen as [...].⁵⁵²

Constraints from competitors following the implementation of the Proposed Transaction

Constraints exerted by Celtic Linen

- 4.305 Celtic Linen is the only other linen laundry which actively competes in a significant way with Berendsen and Kings Laundry in the healthcare market.
- 4.306 Celtic Linen is a private limited company registered in the State with a registered address at Drinagh, Co. Wexford. Celtic Linen's primary plant is located in Drinagh, Wexford where it has two laundry facilities; one of which is currently accredited to serve

⁵⁵¹ See slide 47 of the Amárach Survey.

⁵⁵² See paragraph 4.272 above.



healthcare customers.⁵⁵³ Celtic Linen also has another laundry facility located in Naas.⁵⁵⁴ Celtic Linen has three depots (for linen storage) located in Ballinasloe, Cork and Dublin.

- 4.307 The Commission notes the arguments raised by the Parties in the Report⁵⁵⁵ on Celtic Linen. Based on information obtained from Celtic Linen, it is evident that Celtic Linen has benefited from [...], the acquisition of Millbrook Linen, [...] and [...] since exiting examinership.⁵⁵⁶ However, the Commission notes that while Celtic Linen's financial position has been improving since its recent exit from examinership, it still made a post-tax loss of approximately €1.6 million in 2017.⁵⁵⁷ While the Commission considers that Celtic Linen will continue to compete against the merged entity in the healthcare market post-transaction, the Commission is concerned that Celtic Linen would have an ability and incentive to raise its prices in response to a price rise by the merged entity, as discussed in more detail below in paragraphs 4.320 to 4.321 below.
- 4.308 Specifically, the Commission notes that the removal of Kings Laundry as a competitive constraint on both Berendsen and Celtic Linen will significantly reduce competition in the healthcare market. Ultimately, the Proposed Transaction will result in a reduction of the pool of prospective suppliers of outsourced flat linen rental and maintenance services to healthcare customers from three to two, which must be expected to result in less competitive tenders with reduced pressure on bidders. While the Commission agrees with the Parties' view that Celtic Linen will continue to compete with the merged entity, Celtic Linen will not replace the loss of competitive pressure exerted by Kings Laundry pre-merger. In this regard, as discussed in paragraphs 4.320 to 4.321 below, the Commission is of the view that Celtic Linen would have an incentive to follow any price increases implemented by the merged entity, and would have an incentive to compete less aggressively, thereby limiting its competitive constraint on the merged entity post-transaction.

Constraints exerted by other linen laundries

- 4.309 The Commission notes that [...] and [...] provide very limited laundry services to certain healthcare customers.⁵⁵⁸ For example, [...] currently provides such services to three nursing homes in the State and generates minimal turnover from such customers.⁵⁵⁹ In addition, while [...] was asked to provide back-up services to [...],⁵⁶⁰ it has not actively supplied any outsourced flat linen rental and maintenance services (including back up services) to [...].⁵⁶¹ For instance, [...] has not participated in any hospital tenders to date.

⁵⁵³ The Commission notes that Celtic Linen [...]. Please see meeting minutes with Celtic Linen [...].

⁵⁵⁴ Celtic Linen acquired Millbrook Linen Limited ("Millbrook Linen") located in Co. Kildare in February 2018. Celtic Linen informed the Commission that it intends [...]. Please see meeting minutes with Celtic Linen [...] and phone call record with Celtic Linen [...].

⁵⁵⁵ See paragraph 4.239 above for a summary of the Report on Celtic Linen.

⁵⁵⁶ See meeting minutes with Celtic Linen [...]; phone call record with Celtic Linen [...]; and, Celtic Linen's response to the First Competitor Questionnaire.

⁵⁵⁷ Celtic Linen Directors' Report and Financial Statements for year to 31 December 2017, page 7. Please see meeting minutes with Celtic Linen [...]; phone call record with Celtic Linen dated [...]; and Celtic Linen's response to the First Competitor Questionnaire.

⁵⁵⁸ The Commission notes that it contacted 11 businesses currently active in the linen/laundry sector in the State. Please see [...] response to question 1 [...] to the First Competitor Questionnaire and please see [...] response [...] to the First Competitor Questionnaire. For completeness, the Commission also refers to [...] response to the CCPC's First Competitor Questionnaire and its two nursing homes customers. However, [...] informed the Commission that it intends to fully exit "rental" within the next 2 years. Please see [...] response to the CCPC's First Competitor Questionnaire [...].

⁵⁵⁹ See [...] response [...] to question 5 of the First Competitor Questionnaire. [...] told the Commission that it expects to serve a few additional nursing homes as one of its existing nursing home customers is adding additional sites.

⁵⁶⁰ In this regard, [...] noted that they have not provided back-up services to [...] to date. Please see meeting minutes with [...].

⁵⁶¹ See phone call record with [...].



While [...] has stated an intention to supply hospital customers, it has not sought appropriate accreditation, nor contacted any potential customers.⁵⁶² The Commission also notes that [...] supplies outsourced flat linen rental and maintenance services to two nursing home customers. However, [...] informed the Commission that it intends to fully exit “rental” within the next 2 years.⁵⁶³ [...] has experience of serving healthcare customers in [...], but has not participated in healthcare tenders in the State in the last 10 years and has not provided evidence to the Commission of an intention to build a presence in the healthcare market.

- 4.310 For completeness, the Commission notes that [...] only participates in tenders where scrub suit rental and maintenance services [...].⁵⁶⁴ As such, the Commission considers that the competitive constraint exerted by [...] and [...] in the healthcare market is minimal and unlikely to credibly constrain the merged entity post-transaction. The Commission notes that no linen laundry other than Berendsen, Kings Laundry and Celtic Linen have tendered for any of the hospital contracts which have been issued in the last 5 years. The Commission notes that the OGP Framework can potentially facilitate linen laundries’ entry and expansion in the healthcare market. However, at this point in time, it is uncertain which linen laundries will submit bids and which linen laundries will be admitted to the OGP’s Framework. It is also important to note that admission to the OGP’s Framework does not guarantee the award of any individual customer contracts.⁵⁶⁵

Conclusion on constraint from competitors

- 4.311 It is the Commission’s view that the Proposed Transaction will result in a reduction in the number of significant competitors (from 3 to 2) in the healthcare market. In addition, as noted in paragraph 4.308, notwithstanding Celtic Linen’s emergence from examinership and the subsequent investment in its facilities, the Commission considers that Celtic Linen will not replace the competitive pressure exerted by Kings Laundry pre-merger in the healthcare market.
- 4.312 The Commission notes in the Merger Guidelines that: *“The number of suppliers may be particularly relevant to the intensity of competition if customers seek to have more than one supplier, e.g., a primary supplier and a secondary supplier, as might be the case if continuity of supply is important.”*⁵⁶⁶ Healthcare customers have emphasised the importance of reliability and continuity of supply, and the HSE in particular has indicated that it needs to have more than one supplier, both to provide the volume of service it requires, and to ensure continuity and contingency of supply.⁵⁶⁷
- 4.313 The Commission also notes that constraint from other actual and potential competitors may change following the implementation of the OGP Framework. However, the impact of the OGP Framework on competition in the healthcare market is uncertain at this

⁵⁶² See [...] to the First Competitor Questionnaire and the record of phone call with OCL [...].

⁵⁶³ See [...] response to the CCPC’s to the First Competitor Questionnaire.

⁵⁶⁴ See [...] response to the First Competitor Questionnaire.

⁵⁶⁵ Paragraph 2.1.2 of the document titled *“Request for Tenders dated 04/06/2019 to establish a Multi Supplier Framework Agreement for the provision of and Management of Laundry and Hire of Linen, Curtains, Workwear and Dust Mat Hire Services.”*. “The OGP’s RFT”.

⁵⁶⁶ The Commission’s Merger Guidelines, paragraph 4.40

⁵⁶⁷ See phone call record with [...] dated 7 May 2019.

point in time and will depend on the number of linen laundries that will be admitted to the OGP Framework, and their eventual success in bidding for contracts.

Assessment of the likely effects of the Proposed Transaction on price and/or quality

- 4.314 The Commission's view is that the merged entity would have an incentive and ability to increase prices and/or to degrade quality.
- 4.315 The Commission's market investigation found that the healthcare market is highly concentrated, with the Parties and Celtic Linen supplying the majority of customers and jointly accounting for over [90-100]% of the market.
- 4.316 The evidence shows that Kings Laundry exerts a significant competitive constraint on both Berendsen and Celtic Linen before the Proposed Transaction, based on customer loss analysis, tendering analysis, internal documents and third-party submissions. For the reasons set out in paragraphs 4.305 to 4.308 above, the Commission expects that Celtic Linen will continue to operate as a competitor to the Parties post-transaction. However, in a concentrated market with limited credible alternatives available to customers (see the analysis of CBP in paragraphs 4.353 to 4.377 below), the elimination of one of the Parties from the market reduces the already limited set of options available to customers and is therefore likely to reduce the competitive constraint faced by both the merged entity and Celtic Linen.
- 4.317 The Commission finds that the remaining linen laundries providing outsourced flat linen rental and maintenance services to customers in the healthcare sector are unlikely to offset the loss of Kings Laundry's competitive constraint, because their activity in the market is extremely limited. The potential for market entry and/or expansion is discussed in paragraphs 4.332 to 4.352 below.

Customer perspective of the likely effects

- 4.318 The Commission recognises that third parties' views on the effects of the Proposed Transaction are inconclusive. Third party views came from the Commission's direct engagement with Customers identified by the parties as significant, and from the Amárach Survey. The Commission notes that, in the Parties' Response, the Parties mainly relied on the results of the Amárach Survey and the HSE's view on the Proposed Transaction's impact on HSE. The Parties did not consider that most of the largest healthcare Customers identified by the Parties and interviewed directly by the Commission expressed a significant level of concern, with 6 out of 8 Customers (75%) stating that the Proposed Transaction will have a negative impact.⁵⁶⁸ As noted in paragraph 1.15 above, the Commission's interviews with the significant Customers allowed the Commission to explore Customers' purchasing behaviour and their views on the competitiveness of the market in more detail compared to responses in the Amárach Survey. Furthermore, the Commission notes that the Customers it contacted directly were those identified by the Parties as being of most significance to their business, and it would therefore emphasise the weight of their opinions.⁵⁶⁹

⁵⁶⁸ This is further discussed in paragraphs 10.31 to 10.36 below.

⁵⁶⁹ Also see footnote 22 above where the Commission highlights the proportion of Parties' total turnover accounted for by the interviewed Customers.



4.319 In the Amárach Survey, looking at views expressed by customers, the Commission notes that 12% of respondents thought that the Proposed Transaction will have negative effects with the largest customers expressing a relatively higher level of concern as set out in Table 20 below.⁵⁷⁰

Table 20: Healthcare respondents' views on the impact of the Proposed Transaction

	Sector			Size				
	Total	Public	Private	<10	10-24	25-49	50-100	100+
	26	13	13	1	4	7	6	8
Positive	12%	8%	15%	0	0	29%	0	12%
No Impact	46%	46%	46%	0	25%	43%	66%	50%
Negative	12%	15%	8%	0	0	14%	0	25%
Don't Know	31%	31%	31%	100%	75%	14%	33%	12%

(Source: The Amárach Survey)

Likely reaction of Celtic Linen

4.320 The Commission has set out its view in paragraphs 4.314 to 4.317 of the likelihood that the SLC in the healthcare market will lead to increased prices by the merged entity. The Commission notes that Celtic Linen also benefits from the reduced number of competitors in the healthcare market post transaction, because it faces the same trade-off as the merged entity between the probability of winning the tender and the margin earned in case of winning the tender. Although Celtic Linen has informed the Commission that it intends to [...],⁵⁷¹ the Commission considers that this strategy would not be inconsistent with Celtic Linen's changed bidding incentives and less aggressive competition between Celtic Linen and the merged entity. The Commission considers that Celtic Linen would be likely to adjust its bids in light of the reduced number of competitors following the implementation of the Proposed Transaction. This strategy is all the more likely given Celtic Linen's recent exit from examinership and the fact that it made a post-tax loss of approximately €1.6 million in 2017.⁵⁷² While the Parties dismiss Celtic Linen's financial position as being irrelevant,⁵⁷³ the Commission believes it provides a relevant context when considering whether a price increase is likely to be a viable and appealing strategy for Celtic Linen.

4.321 The Commission is therefore of the view that the Proposed Transaction is likely to enable the merged entity to raise price or reduce service quality profitably. The Commission is of the view that Celtic Linen would be likely to accommodate any price increase by the merged entity.

The magnitude of competitive effects

4.322 The Commission sought to examine whether the magnitude of likely competitive effects of the Proposed Transaction could be estimated.

⁵⁷⁰ Responses to this question should be interpreted with caution due to small sample size.

⁵⁷¹ Stated by Celtic Linen during the meeting with the Commission on [...].

⁵⁷² Celtic Linen Directors' Report and Financial Statements for year to 31 December 2017, page 7.

⁵⁷³ Parties' Response, paragraph 4.2.86



- 4.323 The Parties have highlighted the difficulty of using price differential analysis as the basis for considering the magnitude of potential price increases post transaction, and have noted that estimates of price differential may not result in reliable evidence.⁵⁷⁴ The Commission agrees that estimates of any price differential cannot be relied on for this purpose.
- 4.324 The Commission notes that the existence of a price gap between the Parties is not in itself sufficient to indicate that the merged entity would attempt to close the gap following the Proposed Transaction. However, having regard to the nature of competition in the healthcare market, a reduction in the number of independent, strong and important competitors would, in the Commission's view, give the merged entity an incentive to increase prices due to the increased probability of winning any given bid.⁵⁷⁵ As noted in paragraph 4.47 above, there is a direct trade-off between the probability of winning the tender and the margin earned if the tender is won. The probability of winning a tender decreases as the number of strong bidders increases. Therefore, the elimination of Kings Laundry as a strong and important competitor decreases the competitive constraint on the merged entity following the implementation of the Proposed Transaction.
- 4.325 The Commission considered whether traditional tools that are widely used to model post-merger price changes such as the Indicative Price Rise test ("IPR Test")⁵⁷⁶ or the gross upward price pressure index ("GUPPI")⁵⁷⁷ could be used to estimate the likely magnitude of competitive effects in the healthcare market. In this regard, it should be noted that these tests are typically used in markets where firms use posted prices for all customers. In contrast, the healthcare market is characterised by bilateral negotiations and/or tendering, and prices are customised.
- 4.326 The Commission notes that the CMA in a recent case in a sector which exhibits a similar nature of competition to that of the healthcare sector (i.e., sector where suppliers submit bids or negotiate bilaterally), found that:
- "GUPPI uses measures of diversion between the merging firms and does not take into account the responses of competitors. It may therefore understate the overall price impact in this Merger, in which we found that elimination of one of the Parties from the market reduces the already limited set of options available to customers and is therefore likely to reduce the competitive constraint faced by both the merged entity and PHS."*⁵⁷⁸
- 4.327 Thus, while a GUPPI analysis was carried out and presented in the PMCA report,⁵⁷⁹ the Commission has not relied on it due to the limitations acknowledged by the Commission.

⁵⁷⁴ The Parties' Response, paragraphs 4.28 to 4.37

⁵⁷⁵ This is confirmed in the DotEcon report, slide 6

⁵⁷⁶ See Shapiro, C. (1996), 'Mergers with Differentiated Products', Antitrust, Spring.

⁵⁷⁷ See Salop, S. and Moresi, S. (2009), 'Updating the Merger Guidelines: Comments'.

⁵⁷⁸ See paragraph 7.266 in the CMA's report on the completed acquisition by Rentokil Initial plc of Cannon Hygiene Limited dated 25 January 2019.

⁵⁷⁹ Slide 35 in the PMCA Report.

- 4.328 Instead, having regard to the lack of information that would allow a more precise estimation of the magnitude of competitive effects in the healthcare market,⁵⁸⁰ the Commission notes that, according to accepted economic theory and literature, the participation effect of a reduction in the number of players from three to two in cases where bidders compete in first-price sealed bid auctions can be large.
- 4.329 For example, based on Claess Bengtsson studies,⁵⁸¹ in a symmetric case with 3 firms, a reduction from 3 to 2 firms can reduce consumer surplus by between roughly 9% and 32% (depending on the degree of differentiation between the bidders). In an asymmetric case with one market leader with 70% of the market pre-merger, and two smaller firms with 15% each, the merger between the two smaller firms leads to a reduction in surplus by between 8% and 25% (again depending on the degree of differentiation between the bidders). While the Commission does not consider that these findings are directly applicable to the healthcare market, they support the view that the removal of one strong competitor from a pool of three prior to the transaction is likely to have a significant impact on bid levels.
- 4.330 The Commission concludes that there is insufficient data to calculate the precise magnitude of a price increase associated with the Proposed Transaction. However, economic literature confirms the principle that a reduction in the number of suppliers from three to two is likely to result in a material increase in prices.

Conclusion on the assessment of likely effects

- 4.331 The Commission is of the view that the Proposed Transaction is likely to enable the merged entity to profitably raise price or reduce service quality. The Commission is of the view that Celtic Linen would be likely to accommodate any price increase by the merged entity.

Likelihood of new entry and/or expansion

- 4.332 In this section, the Commission assesses whether market entry or expansion in the healthcare market might prevent an SLC and, as such, considers whether such entry or expansion would be timely, likely and sufficient.

Barriers to Entry and Expansion

- 4.333 The Commission's market enquiries revealed a number of barriers to entry and expansion in the healthcare market.
- 4.334 First, the Commission notes that a considerable financial investment (e.g., capital for linen, equipment, facility, etc.) is required for a new entrant to enter the healthcare market.⁵⁸² This financial investment includes capital costs for premises, linen,

⁵⁸⁰ In this regard, the Commission notes that the Parties were not able to provide their expected margins in the bids that they took part in, but rather provided target margins in the healthcare market. See Berendsen's response to question 22 of the First RFI and Kings Laundry's response to question 25 of the First RFI.

⁵⁸¹ See Claess Bengtsson, "Simulating the effect of Oracle's Takeover of PeopleSoft", (2005) in "Modelling European Mergers: Theory, Competition Policy and Case)" edited by Peter A.G. van Bergeijk and Erik. Kloosterhuis, Cheltenham: Edward Elgar Publishing, pp. 133-149.

⁵⁸² In this regard, the Commission refers to the HSE's view that the likely costs of building a laundry compliant with HIQA/Infection control standards would be €6.8m. Please see <https://www.lmfm.ie/news/hse-says-laundry-services-under-review/>. Accessed on 1 March 2019.



equipment, (e.g., CBW), civil engineering services in respect of drainage, steam, water and ventilation systems etc.

- 4.335 Second, the Commission notes that certain healthcare customers require suppliers of outsourced flat linen rental and maintenance services to adhere to: (i) hygiene standards that specify the level of quality⁵⁸³ required for the processing of flat linen in terms of bio-contamination control; and, (ii) certain linen⁵⁸⁴ processing guidelines.⁵⁸⁵ For instance, the tender document for the supply of outsourced flat linen rental and maintenance services to healthcare customers in respect of St. James' Hospital stated the following in relation quality assurance:

*"Tenderers must demonstrate satisfactory internal quality assurance mechanisms in place and accreditation attained. Tenderers must also demonstrate external quality assurance and accreditation – ISO, RABC Standard EN 14065 and HSG 95(18) or equivalent".*⁵⁸⁶

- 4.336 Similarly the OGP's RFT states that:

*"Tenderers may initially confirm by way of a self-declaration that it will have an external quality assurance accreditation including EN 14065:2002 Risk Analysis and Bio contamination (RABC) Systems (and have quality assurance accreditation EN 14065: 2016 R.A.B.C by **31st December 2019** or equivalent and that this (these) accreditation(s) shall be made available for inspection upon request. It shall be a condition precedent to the award of Services Contracts for Suppliers to provide their external quality assurance accreditation(s)".*⁵⁸⁷

- 4.337 The Commission recognises that, to supply public hospitals, linen laundries not currently supplying public hospitals would need to apply for formal accreditation. According to the NSAI, such accreditation usually takes 3-4 months from application to registration. The Commission notes also the views of a competitor that implementing these accreditations requires considerable input and effort.⁵⁸⁸
- 4.338 The Commission also recognises the importance of previous experience in winning tenders for hospitals. For example, the ITT from St Vincent's University Hospital asks tenderers to demonstrate: *"Your company's skills, efficiency, experience and reliability in delivering similar supplies and services in a comparable operational environment. Firm preference is for an acute hospital environment..... How the skills and experience gained from those contracts can be transferred to the Contracting Authority's*

⁵⁸³ The Commission understands that there are two commonly cited standards: (i) NHS Executive HSG(95)18, *"Hospital laundry arrangements for used and infected linen"*, dated 21 April 1995; and (ii) and BS EN 14065:2002, *"Textiles – Laundry Processed Textiles – Biocontamination Control System"*, dated 6 December 2002 (known in the industry as the risk analysis bio-contamination control ("RABC") standard). In 2016 this standard was superseded by BS EN 14065:2016.

⁵⁸⁴ For example, see the HSE's guidelines for managing laundry and linen in healthcare facilities which can be accessed at: <https://www.hse.ie/eng/about/who/healthwellbeing/infectcont/sth/gl/ipcc-guidelines-section-9.pdf>.

⁵⁸⁵ See paragraph 2.3 above which outlines the specific requirements under such guidelines.

⁵⁸⁶ For more information, please see section 12.3 "Selection criteria" of the St. James Hospital invitation to tender document.

⁵⁸⁷ Table 4 of the OGP's RFT.

⁵⁸⁸ See the Commission's minutes of meeting with [...]. In respect of the RABC standard specifically, the NSAI informed the Commission that such accreditation would usually take about 3-4 months, i.e., from "application to registration" to obtain. The NSAI also noted that this depends on non-conformances which extend the timeline. See NSAI's email dated 8 February 2019.



contract.”⁵⁸⁹ Similarly, when the HSE issued a tender for a Framework Contract (later withdrawn) it emphasised the requirement for bidders to have a *“an experienced Senior Management Team capable of directing and managing the delivery of the Services”* and stated that experience of providing *“healthcare laundry linen services”* is essential: *“Tenderers must demonstrate that they have successfully delivered contracts of a similar nature to the HSE’s requirements during the last three years by providing a list of its previous significant contracts delivered over the last three years.”* This was to be supported by references.⁵⁹⁰ The OGP also emphasised the importance of experience in its ITT for the OGP’s Framework. In this regard, the OGP’s RFT states the following: *“For Lots 1 & 2, Tenderers must declare by way of eESPD that they have successfully delivered three (3) Services contracts of a similar nature to the Services required in Appendix 1, must demonstrate in the Health Sector which may include a Department of Defence Military Hospital within the last 3 years.”*⁵⁹¹

- 4.339 The Commission notes that the requirement for experience constitutes a barrier to entry for any linen laundry that is not already active in supplying hospitals, and that this would be a considerable barrier for all laundries with the exception of Berendsen, Celtic Linen and Kings Laundry. The Amárach Survey indicates that over 96% of healthcare customers said that experience of providing linen laundry services to organisations in the same sector was either essential or very important.⁵⁹²
- 4.340 Some healthcare customers require their suppliers of flat linen rental and maintenance services to healthcare customers in the State to have certain contingency plans in place. For instance, the Commission’s market enquiry indicated that certain hospitals (e.g., [...]) require contingency plans to overcome possible plant failure, and as such, linen laundries with two healthcare facilities in separate locations tend to score higher in tenders.⁵⁹³ In this regard, the OGP’s RFT states that: *“Tenderers must have contingency provisions to be imitated [sic] should there be an interruption in the laundry processing process or in the distribution process that may result in potential interruption of service.”*⁵⁹⁴ In addition, the Amárach Survey indicates that overall, over 4 in 5 customers (84%) when asked, said that good contingency plans were either essential or very important.⁵⁹⁵
- 4.341 Finally, the Commission refers to Berendsen’s internal documents in which the following was stated in respect of the healthcare market:

⁵⁸⁹ Appendix 8, St Vincent’s University Hospital ITT, 3 May 2018

⁵⁹⁰ <https://ted.europa.eu/udl?uri=TED:NOTICE:429143-2018:TEXT:EN:HTML&src=0>

⁵⁹¹ Paragraph 3.2.B of the OGP’s RFT. The OGP’s RFT further specifies that each of these contracts must: (i) *“Be similar in nature to the Services required in Appendix 1 and in the Health Sector which may include a Department of Defence Military Hospital”*; (ii) *“Have a minimum value of €144,000 per year of contracts”*; (iii) *“One of the contracts provided must be in place or have been in place for more than 2 years”*; (iv) *“Demonstrate drop and collect Services of Laundry and / or rental of Linen, Curtains, Workwear and Dust Mats of a similar size and nature to the requirements in Appendix 1, but in the Health Sector which may include a Department of Defence Military Hospital”*; (v) *“Tenderers must provide one example demonstrating experience of the laundry and / or rental, drop and collect Services of Linen, Curtains, Workwear and Dust Mats across multiple sites within one Province in Ireland (Munster, Leinster, Ulster, and Connacht)”* and (vi) *“Demonstrate the laundry and / or rental, drop and collect Services of Linen, Curtains, Workwear and Dust Mats to a Customer with locations in more than one county within Ireland”*.

⁵⁹² 25 out of 26 healthcare customers that were asked this question. See slide 36 of the Amárach Survey where combined responses across healthcare and hospitality sectors are presented.

⁵⁹³ Please see record of a phone call with [...].

⁵⁹⁴ Page 53 of the OGP’s RFT. The OGP indicated that it will consider access to alternative processing facilities within the provider’s organisation amongst the list of other factors when evaluating bidders methodologies in respect of disaster recovery proposals.

⁵⁹⁵ Slide 36 of the Amárach Survey. Note this percentage relates to the whole survey not just healthcare customers.

“[...]”⁵⁹⁶

4.342 To conclude, there are a number of barriers to entry and expansion in the healthcare market including financial barriers (e.g., capital required to develop the necessary infrastructure) and non-financial barriers (e.g., reputation/experience which is an important factor for healthcare sector customers when they choose their suppliers of outsourced flat linen rental and maintenance services). The Commission notes that the Parties agreed that these barriers are relevant when assessing the likelihood of entry and expansion to the healthcare market.⁵⁹⁷

Evidence of Market Entry or Expansion

4.343 The Commission did not observe any evidence that linen laundries based in Northern Ireland are providing outsourced flat linen rental and maintenance services to healthcare customers in the State. In this regard, [...] noted that the last time it participated in the HSE’s tender was over ten years ago.⁵⁹⁸

4.344 Market shares alone demonstrate that linen laundries such as [...] ⁵⁹⁹ and [...], while being somewhat successful in the hospitality sector have not yet been able to significantly penetrate the healthcare sector.⁶⁰⁰

4.345 [...] informed the Commission that it has no plans to expand its current activities (i.e., outside of “workwear, floorcare or washroom services”) in the State.⁶⁰¹

4.346 Fourth, the Commission notes that there has been no new entry in the healthcare market in the last 5 years.

[...] expansion in the healthcare market

4.347 One service provider to nursing homes ([...]), informed the Commission that it intends to supply outsourced flat linen rental and maintenance services to hospitals in the State.⁶⁰² The Commission met with [...] to gather additional evidence about its potential expansion in the healthcare market.⁶⁰³ The evidence presented by [...] can be summarised as follows:

- a) [...] intends on moving into healthcare in the next 1-2 years;
- b) [...] has space for additional machinery (e.g., CBW) that can be used to provide flat linen rental and maintenance services to healthcare customers;

⁵⁹⁶ See page 13 of Berendsen’s [...] submitted by Berendsen in response to Question 9 of the First RFI.

⁵⁹⁷ Frontier Economics Report, Paragraph 6.3.

⁵⁹⁸ Please see phone call record with [...].

⁵⁹⁹ Contrary to the Parties’ submission, [...] does not currently provide flat linen rental and maintenance services to nursing homes in the State. Please see [...] response to the First Competitor Questionnaire.

⁶⁰⁰ See the Commission’s market share analysis in paragraphs 4.56 to 4.76 (hospitality) above and paragraphs 4.213 to 4.222 (healthcare) above.

⁶⁰¹ See [...] to the First Competitor Questionnaire.

⁶⁰² See phone call record with [...].

⁶⁰³ See meeting minutes with [...].



- c) [...] would require minimal investments to alter its facility in order to supply healthcare customers (e.g., complete barrier wall, purchase trolley washer etc.);
- d) [...] expressed interest in providing outsourced flat linen rental and maintenance services to [...] although it was not sure when this hospital's contract will be open for competition;
- e) [...] has not participated in any ITTs issued by hospitals to date;
- f) [...] stated that it is not in the process of obtaining the RABC accreditation and that it does not necessarily intend to get the RABC accreditation prior to competing for healthcare customers. In this regard, [...] opined that obtaining the RABC accreditation would not take a significant amount of time;
- g) [...] was not aware of the HSE's published Framework in Autumn of 2018 nor the OGP's intention to set up a Framework for linen laundry and hire services; and
- h) [...] expects to serve three or four additional nursing homes as one of its existing nursing home customers is adding additional sites.

4.348 At the outset, it is important to stress that unlike Berendsen, Celtic Linen and Kings Laundry, [...] has no experience in providing outsourced flat linen rental and maintenance service to healthcare hospital customers to date, and that its experience in the healthcare market is limited to a small number of nursing homes. As noted in paragraph 4.338 above, reputation/experience is an important factor for healthcare customers when they choose their suppliers of outsourced flat linen rental and maintenance services. Thus, [...] lack of experience in providing outsourced flat linen rental and maintenance services to healthcare customers is a significant factor in considering whether [...] expansion would be timely, likely and sufficient to prevent the identified SLC in the healthcare market.

4.349 Based on the detailed consideration of evidence provided by [...], the Commission expects [...] to attempt to expand in the healthcare market within the next two years as it has the ability and incentive to do so. However, the timeliness and likelihood of [...] expansion will depend on whether [...] will be deemed as a suitable service provider for healthcare customers, and particularly for hospital customers. For example, this could include whether [...] would apply for, and be admitted to the OGP's Framework. As noted in paragraph 2.12 above, the OGP has issued an RFT and set up the selection criteria on the basis of which the potential suppliers will be admitted to the OGP's Framework. The selection criteria include: (i) Economic and Financial Standing; and (ii) Technical and Professional Ability.⁶⁰⁴ Having regard to the criteria set out in the OGP's RFT and in particular the requirement of experience of providing services of a similar nature, i.e. to hospitals, the Commission is of the view that [...] is unlikely to have the required experience to date nor does it meet the OGP's requirement of having at least 3 healthcare customer contracts with a minimum value of €144,000 per year each.

4.350 Finally, it should also be noted that the admission to the OGP's Framework in itself would not guarantee that [...] intended expansion would be sufficient to constraint the

⁶⁰⁴ Section 3.2 of the OGP's RFT.



merged entity. Admission to a Framework does not guarantee success in bidding for contracts. Evidence provided by [...] indicates that [...] plans gradual expansion in the healthcare market by targeting the hospital that is in close proximity to its facility and then using it as a reference to pursue other healthcare customers with a stronger possibility of success. To date, [...] has not made contact with its target customer, and is unaware of the customer's current laundry arrangements and likely future tender plans. The strategy expressed by [...] did not enable the Commission to conclude with sufficient confidence that [...] expansion would be sufficient to prevent the identified SLC in the healthcare market.

Entry by [...] to the healthcare market

- 4.351 Another potential competitor, [...], informed the Commission of its intention to supply outsourced flat linen rental and maintenance services to nursing homes.⁶⁰⁵ It does not currently serve any healthcare customers. At the same time, [...] also noted that it would not have the capacity to serve hospitals and would need to set up another facility in order to do so. Hence, the evidence provided by [...], did not enable the Commission to conclude with sufficient confidence that the entry by [...] would be timely, likely and sufficient to prevent the identified SLC in the healthcare market.

Conclusion on market entry or expansion

- 4.352 The evidence provided to the Commission did not enable the Commission to conclude with sufficient confidence that any supplier will enter/expand to provide flat linen rental and maintenance services to healthcare customers in a timely, likely and sufficient manner to mitigate or prevent the identified SLC or prevent the loss of competitive pressure exerted by Kings Laundry pre-transaction. The OGP's Framework can potentially facilitate market entry/expansion. However, at this point it is uncertain which linen laundries will submit bids and which linen laundries will be admitted to the OGP's Framework. It is also important to note that admission to the OGP's Framework does not guarantee the award of any individual customer contracts. The Commission's view is that the barriers to entry/expansion are of sufficient magnitude to prevent timely market entry, and would not prevent the merged entity from increasing prices/reducing service quality following the implementation of the Proposed Transaction.

Countervailing buyer power

- 4.353 The Commission recognises that, in some circumstances, a customer may, because of its position in the market, be able to successfully resist supplier price increases, and may possess sufficient negotiating strength to enable it to constrain the behaviour of a supplier.⁶⁰⁶ The assessment of CBP considers the extent to which buyer power post-merger would be present and sufficiently effective to prevent an SLC.
- 4.354 The Commission set out its approach to the assessment of potential CBP in paragraphs 4.196 to 4.197 above. The Commission has assessed the CBP of customers in the healthcare market by examining the following factors:

⁶⁰⁵ See phone call record with [...].

⁶⁰⁶ See paragraph 7.1 of the Commission's Merger Guidelines.



- a) customers' ability to switch away from the merging parties, and/or switch to alternative suppliers (discussed in paragraphs 4.355 to 4.357 below);
- b) the number, nature and viability of alternative options available (discussed in paragraphs 4.358 to 4.366 below);
- c) the size and significance of individual customers (discussed in paragraphs 4.367 to 4.373 below); and
- d) the extent to which the CBP of some customers will benefit a sufficient number of customers to prevent an SLC in the market post-merger (discussed in paragraphs 4.374 to 4.376 below).

The ability of customers to switch supplier

- 4.355 The Commission found that customers in the healthcare sector are able to switch between suppliers of outsourced flat linen rental and maintenance services, typically at the end of a procurement exercise. In this regard, the majority of Customers that the Commission interviewed claimed that there were relatively low barriers to switching between alternative providers.⁶⁰⁷ The Amárach Survey indicated that 43% of respondents from the healthcare sector thought that switching suppliers was easy.⁶⁰⁸ The Commission also observed a number of switching examples with customers switching between Berendsen, Kings Laundry and Celtic Linen. However, despite the apparent ease of switching, almost one in five (19%) indicated that they had not changed or renewed laundry services in the past five years.⁶⁰⁹
- 4.356 The Commission notes that the HSE has not tendered for outsourced flat linen rental and maintenance services since 2014.⁶¹⁰ Since then, it has rolled over existing contracts with its two existing suppliers (Berendsen and Celtic Linen).⁶¹¹ While this has clearly limited the ability of any other linen laundry to supply the HSE, it has also limited the HSE's ability to switch supplier.
- 4.357 Overall, the Commission is of the view that switching barriers between linen laundries that are active in the healthcare sector are relatively low.

The number, nature and viability of alternative options available

- 4.358 As noted in paragraph 4.224, the Commission found that the healthcare market is highly concentrated. Three suppliers (Berendsen, Celtic Linen and Kings Laundry) serve the largest and the majority of healthcare customers in the State. Hence, following the implementation of the Proposed Transaction, healthcare customers currently outsourcing their flat linen rental and maintenance requirements will essentially have two potential options when facing a price increase/service quality reduction: a) switch to the only remaining provider of outsourced flat linen rental and maintenance services to healthcare customers; or b) self-supply their flat linen requirements.

⁶⁰⁷ See paragraph 10.22 to 10.23 below.

⁶⁰⁸ Slide 46 of the Amárach Survey.

⁶⁰⁹ Slide 26 of the Amárach Survey.

⁶¹⁰ See the Commission's note of phone call with [...] dated 7 May 2019.

⁶¹¹ See the Commission's note of phone call with [...] dated 7 May 2019.



- 4.359 The Commission notes that the importance of Kings Laundry's presence in the healthcare market was particularly highlighted at the time when Celtic Linen was in examinership and [...].⁶¹² For example, [...] told the Commission that Kings Laundry was a very important third option when considering a supplier of outsourced flat linen rental and maintenance services in 2016 as it was able to meet all of [...] requirements.⁶¹³
- 4.360 Having regard to the relevant counterfactual as set out in paragraphs 4.26 above, the Proposed Transaction will result in the elimination of a credible third service provider to all customers, including public and private hospitals and nursing homes in the healthcare market.
- 4.361 The Commission has considered the extent to which a switch to OPL would be an effective competitive constraint, and would demonstrate CBP. The Commission has already set out its view on why OPL is not part of the product market, and noted earlier that it was more appropriate to consider self-supply as a potential competition effect. This is consistent with the Commission's approach in its merger determination *M/15/026 – Baxter Healthcare / Fannin Compounding*⁶¹⁴. Contrary to the Parties' views set out in the Report on OPLs, in that merger determination the Commission expressed concern *"...about whether hospitals with no aseptic compounding facility (both public and private) have the ability to resist a price rise by Baxter for its compounded chemotherapy medicines post-transaction"*⁶¹⁵. Ultimately, the ability to self-supply was not determinative in this case. The Commission determined that the relevant transaction would not have substantially lessened competition in any market for goods or services in the State because *"...the competitive structure in the commercial supply of compounded chemotherapy medicines in the State is likely to deteriorate to at least the same extent (and, possibly, to an even greater extent) in the absence of the proposed transaction, there is no basis for prohibiting the proposed transaction..."*⁶¹⁶
- 4.362 The Commission refers to paragraphs 3.47 to 3.63 above, and reiterates the following:
- a) all of the Customers in the healthcare sector interviewed by the Commission stated that self-supply would not be a viable option in response to a 5% to 10% price increase of flat linen rental and maintenance services;
 - b) the Amárach Survey indicated that no respondents in the healthcare sector would set up OPL in response to a 5% to 10% price increase by their provider of outsourced flat linen rental and maintenance services;⁶¹⁷ and

⁶¹² See the Commission's note of phone call with [...].

⁶¹³ See the Commission's note of phone call with [...].

⁶¹⁴ The determination of this case can be accessed at: <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m15026-baxter-healthcare-fannin-compounding/>.

⁶¹⁵ Paragraph 76 of M/15/026 – Baxter Healthcare / Fannin Compounding merger determination. The Commission also considered that hospitals (public and private) with no aseptic compounding facility were unlikely to have the ability to exercise effective CBP post-transaction to prevent Baxter from raising the price of compounded chemotherapy medicines. The Commission also considered that the HSE was unlikely to have the ability to exert effective CBP by intervening on behalf of public hospitals with no aseptic compounding facility in response to a price rise by Baxter. See paragraph 135 of M/15/026 – Baxter Healthcare / Fannin Compounding merger determination.

⁶¹⁶ Paragraph 188 of M/15/026 – Baxter Healthcare / Fannin Compounding merger determination.

⁶¹⁷ Slide 51 of the Amárach Survey.



- c) the Parties identified only one instance where a healthcare customer switched to OPL.⁶¹⁸ In contrast, as noted in paragraph 3.54 above, the Commission observed several cases where OPLs were closed in favour of healthcare customers switching to outsourced flat linen rental and maintenance services with such examples including [...] and several nursing homes.

4.363 In relation to costs for setting up OPLs as outlined in the Parties' Report on OPLs, the Commission notes that these costs relate to hospitality OPL rather than healthcare OPL. These costs do not take into account additional costs associated with ensuring that the OPL is compliant with the required hygiene standards such as RABC. In this regard, the Commission refers to the HSE's view that the likely costs of building a laundry compliant with HIQA/Infection control standards would be €6.8m.⁶¹⁹ The Commission also refers to operating costs cited by healthcare sector Self-suppliers.⁶²⁰ These costs are significantly above costs cited in the Report on OPLs.

4.364 The Commission notes the Parties' statement that *"The HSE dictates the flat linen volumes that are brought to the market and the flat linen volumes that are kept in-house."*⁶²¹ The Commission agrees that the HSE may choose not to outsource flat linen rental and maintenance services currently provided by its remaining OPLs. However, the Commission is of the view that the HSE is unlikely to be able to cease purchasing outsourced flat linen rental and maintenance services and self-supply all of its flat linen maintenance requirements in its existing OPLs instead. For example, the Commission has not observed any instances where the HSE withdrew, or threatened to withdraw, the ITT for procuring outsourced flat linen rental and maintenance services and chose to self-supply these services in response to higher prices submitted by bidders.⁶²² Furthermore, as outlined in paragraph 3.59 above, the Commission notes that linen laundries expect the HSE to close its remaining OPLs rather than increase the proportion of self-supplied flat linen rental and maintenance services. In this regard, [...] noted that "[...]"⁶²³

4.365 For these reasons, the Commission is of the view that switching to self-supply is not a viable option for the vast majority of the largest customers in the healthcare market in response to a price increase. While an option of self-supply might be theoretically more viable to certain customers (e.g., smaller nursing homes), the Commission has not observed any evidence indicating that nursing homes would be in a position to effectively exercise such an option to prevent a price increase or service quality deterioration for the whole healthcare market.

4.366 Berendsen's internal documents [...] indicate that healthcare customers [...]. For instance, the Commission refers to Berendsen's internal document titled [...] ⁶²⁴ where it is noted that:

⁶¹⁸ See footnote 122.

⁶¹⁹ <https://www.lfmr.ie/news/hse-says-laundry-services-under-review/>. Accessed on 1 March 2019.

⁶²⁰ See paragraph 10.39 below.

⁶²¹ Paragraph 12 of the Report on OPLs.

⁶²² In this regard, Berendsen stated that it *"is not aware of any instances whereby the HSE took greater volumes of Flat Linen Solution Services in-house"*. See page 5 of document titled *"Berendsen response to Competition and Consumer Protection Commission clarification questions of 8 March 2019"* provided to the Commission on 13 March 2019.

⁶²³ See the Commission's minutes of meeting with [...].

⁶²⁴ Submitted by Berendsen in response to question 9 of the First RFI.

[“...”] (emphasis added)

The size and significance of individual customers

- 4.367 The Commission notes that the top 5 customers of the merged entity would collectively account for around [...] % of its total turnover from the provision of outsourced flat linen rental and maintenance services to healthcare customers in the State.⁶²⁵ The largest customer is [...] which would account for approximately [...] % of the merged entity's turnover⁶²⁶ with no other customer individually accounting for more than [...] % of the merged entity's turnover. The merged entity is therefore not likely to be overly dependent on individual customers which, in turn, weakens the negotiating power of individual customers.
- 4.368 Given the size of the HSE as a purchaser, the Commission has assessed the HSE's past behaviour in response to a price increase. By way of illustration, the Commission notes that, according to [...].⁶²⁷
- 4.369 The Commission observes that the HSE has a degree of discretion as to how its purchases of outsourced flat linen rental and maintenance services are distributed between linen laundries. While this might be expected to give the HSE bargaining power, as noted in paragraph 4.312 above, the HSE requires at least two suppliers to meet its demand for outsourced flat linen rental and maintenance services. This fact diminishes the HSE's bargaining power. In addition, the scale of any would-be CBP is diminished by virtue of the fact that some significant hospitals (e.g., St. James Hospital) carry out their own procurement. The OGP confirmed that there is no mandatory obligation on public bodies to use the OGP's Framework.⁶²⁸ Thus, the Commission considers that the current practice of individual public healthcare hospitals issuing their own ITTs is likely to continue once the OGP's Framework is established.
- 4.370 The Commission notes that public healthcare customers could potentially exercise buyer power by threatening to outsource procurement to the HSE (or the OGP once the OGP's Framework is established). This strategy could only be a credible threat if: a) the affected customer would expect to get a better outcome from outsourced procurement; and b) the HSE or the OGP can credibly threaten the merged entity to switch a significant portion of its flat linen rental and maintenance requirements from the merged entity in response to a price increase to the affected customer.
- 4.371 In this regard, [...] noted⁶²⁹ that “[...]” and “[...]”. Thus, the Commission considers it unlikely that individual customer's threats to outsource their procurement to the HSE or the OGP can be used as a credible threat to prevent the merged entity from increasing prices/reducing service quality.

⁶²⁵ This is based on the Commission's analysis of information submitted by Berendsen in response to question 11 and 21 of the First RFI and question 26 of the second RFI as well as information submitted by Kings Laundry in response to question 11 and 24 of the First RFI. The analysis is based on the parties' turnover generated in 2017.

⁶²⁶ It should also be noted that the HSE does not issue ITTs on behalf of all public sector organisations. Berendsen listed 21 public healthcare organisations that issue ITTs and award contracts themselves. See Berendsen's response to Question 15 of the RFI. Thus, some of the biggest Berendsen's customers such as [...], are treated as individual customers.

⁶²⁷ Stated by [...] during the meeting with the Commission on [...].

⁶²⁸ See the Commission's note of phone call with [...].

⁶²⁹ See the Commission's note of phone call with [...].



- 4.372 Finally, the Commission understands that [...].⁶³⁰ In the Commission's view, this indicates that [...] wished to retain [...] as a viable competitor, rather than intended to sponsor market entry. This is not indicative of bargaining power, because [...] is a very different proposition to sponsoring a new entrant.
- 4.373 The Commission is of the view that the HSE's bargaining power is likely to be limited, due to all of the factors discussed above. In addition, the implementation of the Proposed Transaction would reduce the number of options available to the HSE, which would further undermine the HSE's bargaining position in the purchase of flat linen rental and maintenance services in the State. The Commission acknowledges that the OGP's Framework might centralise public healthcare customers' procurement for outsourced flat linen rental and maintenance services. However, this development in itself is unlikely to give the OGP effective CBP that would prevent a price increase/service quality degradation to other healthcare customers (e.g., private healthcare customers).

The extent to which any buyer power of some customers will benefit a sufficient number of customers and prevent an SLC

- 4.374 Paragraph 7.4 of the Commission's Merger Guidelines states that:

"In a market where some but not all buyers possess significant countervailing buyer power, a merger may still result in increased prices (or other competitive harm) for those customers with little or no countervailing buyer power. For example, it may be that only large customers have the ability to exert countervailing buyer power and protect themselves from competitive harm. Small customers may not have sufficient negotiating strength to successfully exert countervailing buyer power."

- 4.375 The Commission has found that the healthcare market is typically characterised by tendering and/or bilateral negotiations, and that there is little transparency on pricing. As set out in the Commission's Merger Guidelines, in markets characterised by individual negotiations between suppliers and customers, and a lack of pricing transparency, any CBP possessed by one or more customers will typically not protect other customers from any anti-competitive effects that may arise post-merger.⁶³¹
- 4.376 Even if the HSE (or the OGP once the OGP's Framework is established) were able to protect itself from competitive harm having regard to its size (which the Commission does not consider to be the case), following the implementation of the Proposed Transaction, the Commission is of the view that any bargaining power that the HSE/the OGP has/will have is unlikely to prevent a price increase/service quality degradation to other healthcare customers. These customers would be unable to leverage any price discount obtained by the HSE/the OGP primarily because of the lack of pricing transparency. In this regard, it should be noted that the healthcare market is characterised by a very significant number of small customers who would be unlikely to have any bargaining power vis-à-vis the merged entity. For instance, information provided by Berendsen indicates that in 2018, [...] out of [...] ([...])% of Berendsen's

⁶³⁰ Stated by [...] during the meeting with Commission on [...]. [...] also noted that currently [...].

⁶³¹ See paragraph 7.6 of the Commission's Merger Guidelines



healthcare customers spent less than €25,000 on the purchase of flat linen rental and maintenance services with only [...] ([...])% customers spending €100,000 or more.⁶³² The Commission acknowledges that the OGP's Framework might centralise public healthcare customers' procurement for outsourced flat linen rental and maintenance services. However, this development in itself is unlikely to give the OGP an effective CBP particularly if the OGP requires at least two suppliers to meet the demand for its outsourced flat linen rental and maintenance services.

Conclusion on CBP

4.377 The Commission notes that of all healthcare customers, the HSE appears to have some bargaining power, but that its CBP is limited for the reasons discussed above. Furthermore, post transaction, all customers in the healthcare sector will face a reduction in the number of credible suppliers and will be left with a very limited choice of suppliers of outsourced flat linen rental and maintenance services. Thus, the Proposed Transaction would remove a key supplier and reduce healthcare customers' CBP (including that of the HSE or the OGP). The Commission's conclusion is therefore that customers do not have sufficient buyer power to prevent an SLC. The establishment of the OGP's Framework is highly unlikely to change this conclusion.

Overall conclusion on Unilateral Effects in the healthcare market

4.378 For the reasons set out above and considering all of the evidence described above, the Commission considers that the Proposed Transaction is likely to result in significant unilateral effects in the healthcare market. In particular, the Commission is of the view that following the implementation of the Proposed Transaction the merged entity will have an ability and incentive to increase prices/reduce service quality in the healthcare market, which will ultimately result in consumer harm. This is based on the following findings:

- a) the healthcare market can be characterised as a highly concentrated market with 3 significant players, with each of Berendsen, Kings Laundry and Celtic Linen being an important competitor prior to the Proposed Transaction;
- b) based on the Commission's assessment of the nature of pre-merger competition, the Commission considers that suppliers take into account the risk of losing to each of their competitors, and not just to their closest competitor (which they would not generally be able to identify *ex ante* in the context of any given tender);
- c) the Proposed Transaction would eliminate an important competitive force in an already very concentrated market. The credible options available to customers will be reduced to the merged entity and Celtic Linen;
- d) the impact due to the removal of one of the Parties from the competitive process will be unlikely to be offset by competition from Celtic Linen in a timely, likely and sufficient manner, and Celtic Linen will also benefit from the removal of Kings Laundry;

⁶³² See Berendsen's response to question 6 of the Second RFI.



- e) there are a number of barriers to entry and expansion in the healthcare market including financial barriers i.e., capital required to develop the necessary infrastructure and non-financial barriers (e.g., reputation/experience which is an important factor for healthcare sector customers when they choose their suppliers of flat linen rental and maintenance services). The evidence provided to the Commission did not enable the Commission to conclude with sufficient confidence that any supplier will enter/expand into providing outsourced flat linen rental and maintenance services to a significant number of healthcare customers in a timely, likely and sufficient manner to mitigate or prevent the loss of competitive pressure exerted by Kings Laundry pre-transaction; and
- f) the HSE and other healthcare customers only have a limited choice of suppliers and the Proposed Transaction would remove a key supplier. The Commission has not observed evidence that healthcare customers have sufficient CBP to mitigate or prevent the identified likely resulting SLC.

Coordinated Effects

4.379 Coordinated effects occur where a proposed transaction changes the nature of competition in the relevant market by making it more likely that the merged entity and some or all of its competitors will coordinate their behaviour by, for example, raising prices and/or decreasing output. Such coordination refers to actions that are profitable only as a result of each firm accommodating the reactions of others. Thus, the key question is whether a proposed transaction would materially increase the likelihood that firms in the healthcare market and the hospitality market, respectively, would successfully coordinate their behaviour or would strengthen existing coordination between firms in each aforementioned market.

No Evidence of Coordinated behaviour prior to the Proposed Transaction

4.380 The Commission has found no evidence of coordinated behaviour between competitors in the: (i) healthcare market; or (ii) hospitality market prior to the implementation of the Proposed Transaction. The Commission contacted a wide range of third parties during its investigation and none raised any concern about existing coordinated behaviour between linen laundries.

Conditions and Evidence Considered for Coordinated Behaviour

4.381 In assessing the potential for a proposed transaction to result in coordinated effects, the Commission will assess whether the conditions and incentives that are generally necessary for successful coordination between competitors are present or likely to arise, which includes assessing:

- a) the ability to identify common terms of coordination; and
- b) the ability to detect deviations from the terms of coordination, and the ability to punish deviations that would undermine the coordinated interaction.⁶³³

⁶³³ See paragraphs 4.25-4.31 of the Commission's Merger Guidelines for a detailed discussion of the conditions and incentives conducive to coordinated behaviour.

- 4.382 In this instance, the Commission assessed whether the Proposed Transaction would increase the possibility of coordination between competitors in the (i) healthcare market and, (ii) the hospitality market and then examined whether it would increase the sustainability of any such coordination.

The Possibility of Reaching Common Terms of Coordination

- 4.383 In order to coordinate behaviour, firms need to achieve an understanding as to how to do so. This need not involve explicit agreements among competitors, or any communication between them, nor need it involve all firms active in the relevant market or perfect coordination between firms. Coordinated behaviour can take many forms. In some markets, firms may coordinate their behaviour on prices in order to keep them above the competitive level. In other markets, coordination may aim at limiting production or the amount of new capacity brought to the market. Firms may also coordinate their behaviour by dividing the market between them, for instance by geographic area or other customer characteristics.
- 4.384 In this instance, linen laundries in the State could coordinate their behaviour by agreeing on prices charged for outsourced flat linen rental and maintenance services.

Healthcare Market

- 4.385 The Commission considered factors such as, market share symmetry, price transparency, product differentiation, market stability. Having assessed these factors, the Commission is of the view that the Proposed Transaction will not make it more likely that the merged entity and Celtic Linen will engage in coordinated behaviour in the healthcare market with the effect of substantially lessening competition in this market.

Hospitality Market

- 4.386 The Commission considered factors such as, market share symmetry, price transparency, product differentiation, market stability. Having assessed these factors, the Commission is of the view that the Proposed Transaction will not make it more likely that the merged entity and its competitors will engage in coordinated behaviour in the healthcare market with the effect of substantially lessening competition in this market.

Vertical Relationship

- 4.387 The Parties have stated in the notification that there is no vertical relationship between Berendsen and Kings Laundry. The Commission has not identified any vertical relationship between the Parties. On this basis, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

Efficiencies

- 4.388 Paragraphs 8.1 and 8.2 of the Commission's Merger Guidelines state that:

"A merger may generate various efficiencies for the merged entity. The Commission's analysis of efficiencies goes beyond the impact of efficiencies



on the merged entity and focuses on whether verifiable efficiencies mitigate adverse competitive effects and prevent an SLC.”

“The onus rests on the parties to show that claimed efficiencies are (i) merger specific, (ii) verifiable and (iii) benefit consumers sufficiently to prevent an SLC.”

- 4.389 The Commission has not received any submission from the Parties on efficiencies which meets the criteria set out in paragraph 8.2 of the Commission’s Merger Guidelines.



5. REMEDIES TO ADDRESS SLC CONCERNS

- 5.1 Section 22(3) of the Act provides that, on completion of the Phase 2 review period, the Commission shall make one of the following determinations:
- The merger may be put into effect;
 - The merger may not be put into effect; or
 - The merger may be put into effect subject to conditions specified by the Commission.
- 5.2 The Proposed Transaction concerns the acquisition of the whole of Kings Laundry's business: that is, the supply of outsourced flat linen rental and maintenance services to both the hospitality and the healthcare markets. On completion of the Phase 2 review, the Commission has found that the Proposed Transaction will likely result in an SLC only in the healthcare market. The Commission notes that the merged entity would have a combined market share of just over [60-70]% in the healthcare market.⁶³⁴ Kings Laundry accounts for just under [...] % of the healthcare market and so is a significant supplier. However, the Commission notes that Kings Laundry's healthcare business accounts for less than [...] % of its revenue, while the remaining [...] % of its revenue is generated from its hospitality business. The Commission, therefore, considers that, if the SLC concerns in the healthcare market are capable of being addressed either through proposals or specified conditions, it may not be proportionate to require that the merger may not be put into effect.

Proposals Submitted by Berendsen

First Proposals

- 5.3 Following several engagements with the parties to discuss the identified SLC concerns, Berendsen, on a without prejudice basis, submitted proposals on 14 June 2019 (the "First Proposals") pursuant to Section 20(3) of the Act. The submission of these proposals by Berendsen extended the deadline within which the Commission was required to make its determination of the Proposed Transaction in Phase 2. The extension added 15 working days to the Phase 2 period, bringing the review period to a total of 135 working days, in accordance with section 22(4B) of the Act. In the First Proposals Berendsen committed to either behavioural commitments, or to the divestment of certain contracts.

Evaluation of the First Proposals

- 5.4 Following detailed consideration, the Commission concluded that the First Proposals would not address the identified SLC concerns in the healthcare market. The behavioural commitments were not appropriate to deal with the type of structural competition concerns identified in this case.⁶³⁵ The proposed composition and scope of

⁶³⁴ At the end of Q2 2018.

⁶³⁵ In this regard, in case [M/18/031 – Uniphar/SISK Healthcare](#) the Commission was concerned that this transaction could facilitate coordination of prices and terms and conditions by Uniphar. In order to address potential competition concerns and specifically the potential misuse / anti-competitive sharing of third parties' commercially sensitive information, the Commission accepted



the divestment package was insufficient to replace the loss of Kings Laundry as an important, independent, and credible competitor in the healthcare market.

- 5.5 The Commission therefore rejected the First Proposals on this basis that they were inappropriate and insufficient to address the identified SLC concerns in the healthcare market. In light of this, the Commission did not find it necessary to market test the First Proposals.

Second Proposals

- 5.6 On 24 June 2019 Berendsen, on a without prejudice basis, submitted revised proposals (the “Second Proposals”) to the Commission committing to dispose of a package of healthcare contracts, including [...].
- 5.7 The Commission considered that there were implementation risks associated with the Second Proposals which would render the remedy ineffective if they materialised. However, subject to the Parties addressing those implementation risks, the Second Proposals provided a divestment package which the Commission could market test.

Market testing of the Second Proposals

- 5.8 Over the period 25 June to 1 July 2019, the Commission market tested the Second Proposals in order to establish whether they were likely to be appropriate, proportionate and effective in addressing the identified SLC concerns in the healthcare market. Phone interviews were conducted with five competitors⁶³⁶ and five customers.⁶³⁷
- 5.9 All of the customers interviewed expressed concern regarding the reduction in the number of significant suppliers in the healthcare market from 3 to 2. All of the customers expressed a preference for having more than 2 potential bidders in the market. Three of the five customers noted that if the number of possible bidders was to reduce from 3 to 2, they would be concerned about price increases and a degradation in quality of service.
- 5.10 Two customers thought the purchase of a divested package of contracts would not allow the establishment of a new competitor. Their reasons for coming to this view were that any new entrant would require significant financial resources and experience of serving healthcare customers. Two customers thought that a divested package of contracts that included hospitals would be sufficient to enable the purchaser of the divested contracts to become an effective competitor.
- 5.11 Healthcare customers also listed key criteria that they would expect a new supplier of outsourced flat linen rental and maintenance services to meet. Most commonly cited factors were: (i) adherence to infection control/prevention guidelines; (ii) service reliability; (iii) customer service; (iv) experience of providing flat linen rental and

binding behavioural commitments submitted by Uniphar that prevented the exchange of competitively sensitive information between Uniphar and SISK Healthcare.

⁶³⁶ [...]. [...] expressed no interest in entering the healthcare market. For the purposes of the market testing, competitors included laundries not currently active in the healthcare market, but with some potential to enter.

⁶³⁷ [...]. [...] and [...] did not respond.



maintenance services to healthcare customers of a similar size; and (v) demonstrable ability to plan for contingencies and emergencies.

- 5.12 Four out of five competitors thought that the divestment of contracts could be an effective remedy, but this was subject to the scope and nature of divested contracts (e.g., size and location of customers). Several competitors also noted that some assets (e.g., linen stock and trolleys) should be divested alongside contracts to reduce the level of investment that a prospective purchaser would need to incur when buying divested contracts.
- 5.13 Three out of five competitors [...] expressed interest in principle in purchasing healthcare contracts. All of these [competitors] noted that more information about the nature of the contracts to be divested (e.g., price, contract length, locations of customers, type of work, frequency of deliveries etc.) would be required before they could fully confirm interest.
- 5.14 On 2 July 2019 the Commission informed the Parties of the results of the market testing during a telephone conference.

Evaluation of the Second Proposals

- 5.15 The Commission was of the view that the divestment of the healthcare contracts envisaged under the Second Proposals (the “Divestment Package”) could have been sufficient in order for a prospective suitable purchaser to replace the competitive constraint exerted by Kings Laundry in the healthcare market.
- 5.16 While the Commission considered that the substance of the Second Proposals may have addressed its competition concerns, it had significant remaining concerns regarding the implementation of the measures. These were post-completion proposals that posed serious implementation risks. The Commission engaged extensively with the Parties in relation to these concerns. Ultimately, however, the Parties were unable to address the implementation risks associated with the Second Proposals.

Third Proposals

- 5.17 On 8 July 2019, Berendsen submitted a revised set of proposals (the “Third Proposals”). In the Third Proposals, Berendsen committed to:
- Divest three [...] healthcare contracts, [...] to a third party purchaser approved by the Commission;
 - Divest such additional healthcare contracts of an aggregate value (by reference to 2018 revenue figures), which, when aggregated with the value of the [...] healthcare contracts referred to above, have a total value of [...]; and
 - Divest the rights and title in ancillary items such as linen stock (but excluding, for the avoidance of doubt, any facilities or fixed assets (e.g., washers, dryers, or trucks)) as required by a Third Party Purchaser and to otherwise assist the Third Party Purchaser to enable it to provide the services in respect of the relevant Healthcare Contracts.

or

- If it became apparent to Berendsen that it was unable to divest the three [...] healthcare contracts in the manner described above, it would enter into discussions with the Commission to identify an alternative package of healthcare contracts that could be divested to an approved third party purchaser(s) and that would address the Commission's competition concerns.

5.18 Berendsen committed to refraining from completing the Proposed Transaction unless and until the Commission has confirmed that it has complied with the Third Proposals.

Evaluation of the Third Proposals

5.19 The Commission considers that the Third Proposals submitted by the Parties address its SLC concerns in the healthcare market (the "Proposals"). The Proposals are included as Chapter 9 of this determination. The divestment of a package of healthcare contracts as described in the Proposals will allow the approved third party purchaser to provide effective competition to the merged entity and Celtic Linen. Berendsen's commitment to refrain from completing the Proposed Transaction until it has completed the divestment of the healthcare contracts addresses the Commission's concerns regarding implementation risks.

5.20 The Commission has taken the Proposals into account and, in light of the Proposals (which form part of the basis of the Commission's determination) has determined, in accordance with section 21(2)(a) of the Act, that the result of the proposed acquisition whereby Berendsen would acquire sole control of Kings Laundry will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.



6. ANCILLARY RESTRAINTS

- 6.1 The SPA contains a number of restrictive obligations on Kings Laundry. These include non-compete and non-solicitation clauses. None of these restrictive obligations exceeds the maximum duration acceptable to the Commission⁶³⁸. The Commission considers these restrictions to be directly related to and necessary for the implementation of the Proposed Transaction insofar as they relate to the State.

⁶³⁸ In this respect, the Commission follows the approach adopted by the EU Commission in paragraphs 20 and 26 of its “Commission Notice on restrictions directly related and necessary to concentrations” (2005). For more information see [http://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN)



7. CONCLUSION

- 7.1 In light of the binding divestiture proposals submitted by Berendsen and in light of its analysis as set out in this Determination, the Commission has determined that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.

8. DETERMINATION

Pursuant to section 20(3) of the Competition Act 2002, as amended (the “Act”), Berendsen Ireland Limited (“Berendsen”) has submitted to the Competition and Consumer Protection Commission (the “Commission”) the proposals set out below regarding measures to be taken to ameliorate any effects of the proposed acquisition on competition in markets for goods or services in the State, with a view to the said proposals becoming binding on Berendsen.

The Commission has taken the proposals into account and, in light of the said proposals (which form part of the basis of its determination), has determined, in accordance with section 22(3)(a) of the Act, that the result of the proposed acquisition, whereby Berendsen would acquire sole control of Kings Laundry Limited, will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect. Before making a determination in this matter, the Commission, in accordance with section 22(8) of the Act, had regard to any relevant international obligations of the State, and concluded that there were none.

For the Competition and Consumer Protection Commission

Isolde Goggin
Chairperson
Competition and Consumer Protection Commission



9. BERENDSEN'S PROPOSALS

M/18/063 – Berendsen (Elis)/Kings Laundry

Proposals by Berendsen to the Commission (the “Proposals”)

8 July 2019

Recitals

- A. The Proposed Transaction, as defined below, was notified to the Commission on 7 August 2018.
- B. Berendsen and Kings Laundry are both active in the supply of outsourced rental and maintenance of flat linen in the healthcare sector in the State.
- C. Pursuant to Section 20(3) of the Act, Berendsen, has submitted the Proposals to the Commission for the purpose of ameliorating the Commission's competition concerns in respect of the effect of the Proposed Transaction on competition in markets for goods or services in the State, with a view to the Proposals becoming binding on Berendsen on the date of the Determination.
- D. It is understood that Completion will only occur on condition that Berendsen has satisfied its obligations under paragraphs 6 or 7 below in relation to the Healthcare Contracts (as defined below) (and healthcare contracts, as the case may be). Therefore, in practical terms Completion and the satisfaction by Berendsen of its obligations to deal with the Healthcare Contracts in compliance with paragraph 6 or Healthcare Contracts (and healthcare contracts, as the case may be) in compliance with paragraph 7 of these Proposals are inter-conditional. Accordingly, it is the intention of Berendsen to arrange for Completion to happen contemporaneously with the satisfaction by it of its obligations to deal with the Healthcare Contracts (and healthcare contracts, as the case may be) in accordance with paragraphs 6 or 7 below. In any event, for the avoidance of doubt, Completion will not take place before Berendsen has fulfilled its obligations regarding the Healthcare Contracts (and healthcare contracts, as the case may be) in accordance with paragraphs 6 or 7 below.
- E. In its discussions with Berendsen, the Commission has confirmed that in the event that the provisions of paragraph 17 are invoked, the Commission will act reasonably in the context of assessing alternative package(s) which Berendsen may be required to put to the Commission to dispose of Healthcare Contracts (and healthcare contracts, as the case may be) and in particular as regards how those alternative package(s) to dispose of such contracts can be packaged together and as regards the number of Third Party Purchasers (as defined below) to whom the relevant contracts can be offered in order to address the Commission's competition concerns.

Definitions

For the purpose of these Proposals, the following terms shall have the following meaning:

“**Act**” means the Competition Act 2002, as amended;

“Berendsen” means Berendsen Ireland Limited, a wholly-owned subsidiary of Berendsen Limited (UK) and an indirect wholly-owned subsidiary of Elis;

“Berendsen Manager” has the meaning ascribed to it in paragraph 27;

“Commission” means the Competition and Consumer Protection Commission and its successors;

“Commission Monitoring Trustee” has the meaning ascribed to it in paragraph 20;

“Completion” means completion of the Proposed Transaction in accordance with the terms of the Share Purchase Agreement;

“Determination” means, for the purposes of these Proposals only, the determination of the Commission pursuant to Section 22(3)(a) of the Act that the Proposed Transaction may be put into effect taking into account the Proposals, which form part of the basis of the Determination;

“Elis” means Elis S.A.;

“Healthcare Contracts” means contracts in place between Berendsen and its [...] customers for the supply of rental and maintenance of flat linen, and **“Healthcare Contract”** shall be construed accordingly;

“Kings Laundry” means Kings Laundry Limited;

“Kings Laundry Business” means the outsourced flat linen laundry business acquired by Berendsen pursuant to the Share Purchase Agreement;

“Long Stop Date” means

(a) the period of [...] from the date of the Determination or (i) such later date as the Commission, acting reasonably, may agree in writing or (ii) such extended period as may result from the delays referred to in paragraphs 14, 18, 19 and 20 below; or

(b) in the case of where:

- (i) a binding contract has been entered into for the sale of Healthcare Contracts; or
- (ii) a binding contract has been entered into in respect of the sale of Healthcare Contracts (and healthcare contracts, as the case may be) pursuant to the review provisions herein,

it means, [...] from the date of entry into such binding contract (or such later date as may be agreed by the Commission acting reasonably following consultation with Berendsen or as extended under paragraph 10 below or such extended period as may result from the delays referred to in paragraphs 14, 18, 19 and 20); and

in any event, a date no later than [...] from the date of the Determination.

“Monitoring Mandate” has the meaning ascribed to it in paragraph 21;



“Monitoring Trustee” has the meaning ascribed to it in paragraph 21;

“Monitoring Trustee Reports” has the meaning ascribed to it in paragraph 23;

“New Monitoring Trustee” has the meaning ascribed to it in paragraph 19;

“Package A” and **“Package A Contract(s)”** have the meanings ascribed to them in paragraph 6;

“Proposed Transaction” means the proposed acquisition of sole control of Kings Laundry by Berendsen pursuant to the terms of the Share Purchase Agreement as notified to the Commission on 7 August 2018;

“Proposed Monitoring Trustee” has the meaning ascribed to it in paragraph 18;

“Relevant Customer” has the meaning ascribed to it in paragraph 8 and **“Relevant Customers”** shall be construed accordingly;

“Share Purchase Agreement” means the share purchase agreement, dated 25 July 2018, entered into between Berendsen and the owners of Kings Laundry for the purchase of the entire issued share capital of Kings Laundry;

“Third Party Purchaser” means an independent third party purchaser that is not connected to Elis, Berendsen or Kings Laundry within the meaning of section 220 of the Companies Act 2014 and **“Third Party Purchasers”** shall be construed accordingly;

“Third Party Sale” has the meaning ascribed to it in paragraph 8;

“Working Day” means a day (other than a Saturday or a Sunday or public holiday) on which banks are open for retail business in Dublin.

Part I

Proposals relating to the Healthcare Contracts

1. Berendsen hereby undertakes to the Commission to procure, in advance of Completion, to the extent it is within its powers of procurement to do so, in compliance with paragraph 6 or 7, the divestment of the Healthcare Contracts (and the healthcare contracts, as the case may be) by the Long Stop Date to a Third Party Purchaser approved by the Commission, having regard to the provisions of paragraph 4, (whose approval shall not be unreasonably withheld or delayed).
2. Berendsen recognises that the acquisition of the Healthcare Contracts (and the healthcare contracts, as the case may be) by a Third Party Purchaser must not be likely to create, in light of information available to the Commission, prima facie competition concerns.
3. Berendsen recognises that for a Third Party Purchaser to meet with the Commission’s approval, such purchaser shall be independent of and unconnected to Berendsen, Elis and Kings Laundry and is one that is reasonably likely to obtain all authorisations and



regulatory consents (if legally required) in relation to the acquisition of the Healthcare Contracts (and the healthcare contracts, as the case may be).

4. In assessing the suitability of a Third Party Purchaser, the Commission may have regard to factors such as its financial resources, expertise in the rental and maintenance of flat linen, contingency planning and whether such Third Party Purchaser is committed to maintaining and developing the Healthcare Contracts (and the healthcare contracts, as the case may be) and being an active competitive force in the healthcare market.
5. In assessing the suitability of a Third Party Purchaser, the Commission shall accept the decision of a Relevant Customer that its Healthcare Contract can be divested by Berendsen to the relevant Third Party Purchaser, subject to the provisions of paragraph 15 below.
6. Berendsen hereby undertakes to the Commission to procure, to the extent it is within its powers of procurement to do so, the divestment to a Third Party Purchaser by the Long Stop Date all of its rights, title and interests in respect of:
 - (i) three (3) Healthcare Contracts, [...]; and
 - (ii) such additional Healthcare Contracts of an aggregate value (by reference to 2018 revenue figures), which, when aggregated with the value of the Healthcare Contracts referred to in (i) above, have a total value of [...]. Berendsen also undertakes to the Commission to procure, to the extent it is within its powers of procurement to do so, the divestment of the rights and title in ancillary items such as linen stock (but excluding, for the avoidance of doubt, any facilities or fixed assets (e.g., washers, dryers, or trucks)) as required by a Third Party Purchaser and to otherwise assist the Third Party Purchaser to enable it to provide the services in respect of the relevant Healthcare Contracts (**"Package A"** and the relevant contract(s) therein being each a **"Package A Contract(s)"**).
7. In circumstances where it becomes apparent to Berendsen (acting reasonably and in good faith) and to the Monitoring Trustee (who will confirm this to the Commission in writing) at any time prior to the Long Stop Date that it will not be possible to complete the divestment of Package A by the Long Stop Date, both Berendsen and the Commission undertake to consider, in good faith (and for this purpose the Commission further undertakes to invoke the review provisions in paragraph 17) an alternative package of Healthcare Contracts (and healthcare contracts, as the case may be) which could be divested by Berendsen in a form which would address the Commission's concerns. In this regard, the Commission shall have due regard to:
 - (i) the combination of Healthcare Contracts and Berendsen's other healthcare contracts available at that time for the purposes of putting an alternative package(s) together to achieve the aggregate value of [...] (by reference to 2018 revenue figures); and



- (ii) the circumstances pertaining at the time and, in particular, to the status and standing of any Third Party Purchaser (in the relevant market(s)) who may be prepared to acquire the relevant contracts.
- 8. For the purposes of paragraphs 6 and 7, Berendsen acknowledges and agrees that it shall not actively solicit healthcare flat linen business from a customer who was party to a Healthcare Contract or to another of its healthcare contracts which has been divested pursuant to these Proposals (each a **“Relevant Customer”**) for a period of [...] from the date of completion of a sale to a Third Party Purchaser (each a **“Third Party Sale”**).
- 9. For the purposes of:
 - (i) Package A, if Berendsen enters into a binding contract (which for the avoidance of doubt may contain pre-conditions to its completion) with a Third Party Purchaser approved by the Commission for the sale of such Healthcare Contracts and such transaction completes within [...] of the date of entry into the relevant binding contract (or such longer period as may be agreed by the Commission acting reasonably following consultation with Berendsen or as extended under paragraph 10), and/or
 - (ii) any alternative package(s) agreed under paragraph 7 and/or 17 below, if Berendsen enters into a binding contract (which for the avoidance of doubt may contain pre-conditions to its completion) with a Third Party Purchaser approved by the Commission for the sale of such Healthcare Contracts (and healthcare contracts, as the case may be) and such transaction completes within [...] of the date of entry into the relevant binding contract (or such longer period as may be agreed by the Commission acting reasonably following consultation with Berendsen or as extended under paragraph 10),

this shall constitute evidence that Berendsen has complied with Part I of these Proposals, provided that (for the avoidance of doubt) Completion has not taken place in advance of (i) or (ii) and the Commission has confirmed in writing that Berendsen has complied with Part I of these Proposals and may proceed to Completion. In this regard, the Commission agrees to provide this written confirmation promptly to facilitate near simultaneous completion of the divestment of the Healthcare Contracts (and healthcare contracts, as the case may be) and Completion.
- 10. The Commission acknowledges that it is the intention of Berendsen to complete a Third Party Sale contemporaneously with Completion and accordingly the Commission agrees to extend any relevant deadlines (subject to the Long Stop Date) set out herein in accordance with any reasonable request received from Berendsen in order for Completion and the completion of a Third Party Sale to happen contemporaneously.
- 11. Berendsen shall:
 - a. as soon as practicable, inform the Monitoring Trustee and the Commission in writing, with a fully documented and reasoned proposal, of any Third Party



Purchaser who indicates a genuine intention to purchase the Healthcare Contracts (and the healthcare contracts, as the case may be), enabling the Monitoring Trustee and the Commission to verify the suitability of the Third Party Purchaser; and

- b. when Berendsen and the Third Party Purchaser have entered into a binding contract for the sale of any Healthcare Contract, submit to the Monitoring Trustee and the Commission a copy of a binding contract(s) and a fully documented and reasoned report enabling the Monitoring Trustee and the Commission to verify that the requirements set out in these Proposals are fulfilled and that there has been no material change in the status of the Third Party Purchaser not reasonably foreseeable at the time the Commission assessed that purchaser's suitability, subject to the Commission agreeing to keep confidential all such information received.
12. Within [...] of receipt of a fully documented and reasoned proposal from Berendsen in accordance with paragraph 11(a), the Monitoring Trustee shall provide a written report to the Commission verifying the suitability of the Third Party Purchaser(s). The Commission shall communicate in writing its approval or non-approval of a Third Party Purchaser within [...] of receipt of a fully documented and reasoned proposal from Berendsen identifying that purchaser in accordance with paragraph 11(a).
 13. Within [...] of receipt of a copy of a binding contract(s) and a fully documented and reasoned report from Berendsen in accordance with paragraph 11(b), the Monitoring Trustee shall provide a report to the Commission verifying whether the requirements set out in these Proposals have been fulfilled and that there has been no material change in the status of the Third Party Purchaser. Within [...] of receipt of a copy of a binding contract(s) and accompanying fully documented and reasoned report in accordance with paragraph 11(b), the Commission shall communicate in writing its view as to whether there has been any material change in the status of the Third Party Purchaser and whether the requirements set out in these Proposals have been fulfilled as provided for in paragraph 11(b).
 14. Failure of the Commission to communicate its approval or non-approval of a Third Party Purchaser within ten (10) Working Days of receipt of a fully documented and reasoned proposal identifying such a purchaser in accordance with paragraph 11(a) shall postpone the running of the relevant periods in the definition of Long Stop Date until such date as the Commission communicates to Berendsen its approval or non-approval. However, if the Commission does not communicate its approval or non-approval within twenty (20) Working Days of receipt of a fully documented and reasoned proposal, such approval shall be deemed to have been given unconditionally.
 15. It is acknowledged and agreed by Berendsen, for the purposes of divesting Package A, that the relevant Healthcare Contracts shall be divested to a single Third Party Purchaser. It is acknowledged and agreed by the Commission for the purposes of paragraph 7 above, that it will consider in good faith the possibility of Berendsen divesting the Healthcare Contracts (and healthcare contracts, as the case may be) to more than one (1) Third Party Purchaser so as to afford Berendsen the best opportunity



to divest such contracts. In the case of a plurality of offers from Third Party Purchasers to whom the Commission does not object, Berendsen shall be free to accept any offer or offers, or to select the offer or offers it considers best, provided that the Commission has confirmed in writing that its competition concerns would be addressed.

16. In circumstances where it has not been possible to complete the divestment of Package A, or the divestment of any alternative package of Healthcare Contracts (and healthcare contracts, as the case may be) agreed by Berendsen and the Commission under the review provisions in paragraph 17 by the Long Stop Date, Berendsen will terminate the Share Purchase Agreement.

Proposals review clause

17. The Commission may at its sole discretion, either in response to a reasoned request from Berendsen or the Monitoring Trustee or, in appropriate cases on its own initiative, extend any of the time periods provided for in these Proposals, with the exception of the time periods applying to the Commission mentioned in paragraphs 18, 19 and 20 below unless with the agreement of Berendsen (and such agreement not to be unreasonably withheld). The Commission may further, at its sole discretion, either in response to a reasoned request from Berendsen or the Monitoring Trustee showing good cause or, in appropriate cases on its own initiative (with the agreement of Berendsen and such agreement not to be unreasonably withheld) waive, modify or substitute any provision in these Proposals.

Part II

Appointment of a Trustee in respect of the Proposals in Part I

Appointment of a Monitoring Trustee

18. Within [...] of the date of the Determination, Berendsen will propose to the Commission a trustee, who is independent of Berendsen, Elis and Kings Laundry (the “**Proposed Monitoring Trustee**”). The appointment of the Proposed Monitoring Trustee is subject to the approval of the Commission (such approval not to be unreasonably withheld or delayed). If the Commission does not reject the Proposed Monitoring Trustee by notice in writing within [...] of the date of the proposal by Berendsen, the Proposed Monitoring Trustee shall be deemed to have been approved.
19. If the Proposed Monitoring Trustee is rejected by the Commission, Berendsen will propose the name of a new trustee (the “**New Monitoring Trustee**”) within [...] of being informed by the Commission of the rejection. If the Commission does not reject the New Monitoring Trustee by notice in writing to Berendsen within [...] of the new proposal, the New Monitoring Trustee shall be deemed to have been approved.
20. If the New Monitoring Trustee is rejected by the Commission, the Commission shall nominate a suitable trustee (the “**Commission Monitoring Trustee**”) within [...], whom Berendsen will appoint or cause to be appointed.



21. Within [...] of the date on which the Commission has approved or is deemed to have approved either the Proposed Monitoring Trustee, the New Monitoring Trustee or the Commission Monitoring Trustee, Berendsen shall enter into a mandate agreement (the “**Monitoring Mandate**”) with the approved trustee (the “**Monitoring Trustee**”), the terms of which shall have previously been agreed with the Commission, which confers on the Monitoring Trustee all the rights and powers necessary to permit the Monitoring Trustee to monitor compliance with the Proposals.
22. The Monitoring Trustee shall be independent of Berendsen, Elis and Kings Laundry, possess the necessary qualifications and experience to carry out its mandate and shall neither have nor become exposed to a conflict of interest.

Monitoring Trustee’s Mandate

23. Pursuant to the Monitoring Mandate, throughout the duration of the Monitoring Trustee’s appointment, the Monitoring Trustee shall, in respect of the Proposals:
- a. Provide written reports (the “**Monitoring Trustee Reports**”) to the Commission on the progress of the discharge of its duties under the Mandate, identifying any respects in which the Monitoring Trustee has been unable to discharge such duties. The Monitoring Trustee Reports shall be provided at monthly intervals, commencing one (1) month after the date of the appointment of the Monitoring Trustee, or at such other times or time periods as the Commission may specify and are notified in writing to Berendsen. Berendsen shall receive a non-confidential copy of such Monitoring Trustee Reports;
 - b. Monitor and advise the Commission as to the developments in selecting a Third Party Purchaser and as to the conduct of the negotiations;
 - c. Monitor and advise the Commission on whether a Third Party Purchaser with whom Berendsen intends to negotiate is likely to satisfy the Commission’s requirements as to suitability, including providing a written report (pursuant to paragraph 12 above); and
 - d. Provide a written report verifying whether the requirements set out in these Proposals have been fulfilled and that there has been no material change in the status of the Third Party Purchaser (pursuant to paragraph 13 above).

Miscellaneous

24. The Monitoring Trustee’s duties and functions as set out above shall not be extended or varied in any way by Berendsen save with the express written approval of the Commission (whose approval shall not be unreasonably withheld or delayed). Any instruction or request to the Monitoring Trustee from Berendsen which conflicts with the terms of the Monitoring Mandate and the duties and functions as set out above, will be considered null and void.
25. The Commission may, on its own initiative or at the request of the Monitoring Trustee, give any orders or instructions to the Monitoring Trustee that are required in order to



ensure compliance with the Proposals so long as Berendsen is first given a reasonable opportunity to comment on any such orders or instructions in advance.

26. In respect of the Proposals, the Monitoring Mandate shall expire once the Healthcare Contracts have been dealt with in compliance with paragraph 6 or the Healthcare Contracts (and healthcare contracts, as the case may be) have been dealt with in compliance with paragraph 7 and the Commission has confirmed in writing to Berendsen that it is satisfied that there has been compliance with the Proposals (it being understood that such confirmation from the Commission shall not be unreasonably withheld or delayed).
27. Berendsen shall appoint an employee within Berendsen with responsibility for the management of the Healthcare Contracts (the “**Berendsen Manager**”). The Berendsen Manager shall continue to manage all operations relating to the Healthcare Contracts in the best interest of those contracts with a view to ensuring their continued economic viability, marketability, and competitiveness.
28. The Monitoring Trustee shall have full and complete access to the Berendsen Manager and any other employee of Berendsen, as required, in order to ensure compliance with the obligation to maintain and preserve the economic viability, marketability and competitiveness of the Healthcare Contracts.
29. Berendsen will provide the Monitoring Trustee with all reasonable assistance and will procure (to the extent it is in its powers of procurement to do so) that all relevant third parties provide such assistance required to ensure compliance with the Proposals. Berendsen will provide or cause to be provided to the Monitoring Trustee all such assistance and information, including copies of all relevant documents accessible by Berendsen as the Monitoring Trustee may require in carrying out its Monitoring Mandate and will pay reasonable remuneration for the Monitoring Trustee’s services.
30. In addition, at the expense of Berendsen, the Monitoring Trustee may appoint an advisor, subject to Berendsen’s approval (whose approval shall not be unreasonably withheld or delayed) if the Monitoring Trustee considers the appointment of such advisor is strictly necessary and appropriate for the performance of its duties and obligations under the Monitoring Mandate, provided that any fees and other expenses incurred by the Monitoring Trustee are reasonable. Should Berendsen refuse to approve the advisor proposed by the Monitoring Trustee, the Commission may approve the appointment of such advisor, having first consulted with Berendsen. Only the Monitoring Trustee shall be entitled to issue instructions to any such advisor.
31. Notwithstanding the Monitoring Trustee’s overall responsibility to discharge its functions and in particular notwithstanding the Monitoring Trustee’s position as an independent unrelated third party, the Monitoring Trustee (who shall undertake in the Monitoring Mandate to do so) shall have to the extent possible, given the nature of its tasks, due regard to the commercial interests of Berendsen.



32. Berendsen shall indemnify the Monitoring Trustee and its employees and agents (each an “**Indemnified Party**”) and hold each Indemnified Party harmless against, and hereby acknowledges and agrees that an Indemnified Party shall have no liability to Berendsen for, any liabilities arising out of the performance of the Monitoring Trustee’s duties under the Monitoring Mandate, except to the extent that such liabilities result from the wilful default, recklessness, negligence and/or bad faith of the Monitoring Trustee, its employees, agents and/or advisor.
33. The Monitoring Mandate shall be deemed to be discharged and the Monitoring Trustee’s appointment shall be deemed to be terminated if Berendsen announces and demonstrates to the Commission that the Proposed Transaction has been irrevocably abandoned.

Monitoring Trustee review clause

34. Subject to the provisions of paragraph 17 above, the Commission may, at its sole discretion, in response to a reasoned request from Berendsen or the Monitoring Trustee showing good cause or, in appropriate cases on its own initiative (with the agreement of Berendsen and such agreement not to be unreasonably withheld) waive, modify or substitute any provision in relation to the appointment of the Monitoring Trustee.

Signed by:

Jack Byron

Director

Duly authorised for and on behalf of Berendsen

8 July 2019



Confidential Annex I

Healthcare Contracts

[...] ⁶³⁹

⁶³⁹ [...].

10. APPENDIX 1 – SUMMARY OF CUSTOMERS’ AND SELF-SUPPLIERS’ RESPONSES

- 10.1 This appendix provides a summary overview of the responses obtained from the Customers and Self-suppliers. These are considered and referred to throughout this Determination.

Background and objectives

- 10.2 In order to further inform the Commission’s understanding of the structure of the market and the potential impact of the Proposed Transaction the Commission issued questionnaires to some of the larger organisations in healthcare and hospitality sectors. Some of these organisations are purchasing outsourced flat linen rental and maintenance services from the parties while some of these organisations have OPLs. The Commission’s Market Enquiries were then supplemented by the Amárach Survey which targeted a broader range of organisations from the healthcare and hospitality sectors. The Amárach Survey is presented alongside this Determination.
- 10.3 The Commission’s Market Enquiries examined, amongst other things:
- a) Pricing structure and contract information;
 - b) Information on the criteria which are typically used by customers in the hospitality market and in the healthcare market when selecting providers of flat linen rental and maintenance services;
 - c) Information on procurement methods employed - tenders or quotations etc.;
 - d) Information and views on switching providers in the sector;
 - e) Information and views on switching to: (i) self-supply by building an OPL; or (ii) wash-only launderettes, in response to a 5% - 10 % price increase of laundry services; and
 - f) Information on the impact of the Proposed Transaction on purchasers of flat linen rental and maintenance services.
- 10.4 The Commission is mindful that information obtained from the Customers and Self-suppliers, while a useful practical means of gathering information on customer and business preferences/behaviours, need to be interpreted with care and that stated preferences of Customers and Self-suppliers can differ from how they behave in practice. Therefore, the Commission does not solely or overly rely on information obtained from the Customers and Self-suppliers in forming its conclusions.

Research methodology and customer profile

- 10.5 The Commission relied on information provided by the Parties in the Merger Notification Form in order to prepare a list of purchasers of outsourced flat linen rental and maintenance services and organisations with OPLs in both healthcare and hospitality sectors.
- 10.6 The Commission circulated questionnaires to 20 Customers⁶⁴⁰ and 11 Self-suppliers⁶⁴¹ in the healthcare and hospitality sectors. For each Customer and Self-supplier, the Parties identified relevant person responsible for making flat linen rental and maintenance purchasing decisions (or, in case of Self-suppliers, responsible for managing an OPL).
- 10.7 The responses were obtained by a number of means including respondents returning completed questionnaires, telephone interviews based on the questionnaire and, in two cases, face to face meetings. The information collected via phone calls have been summarised in notes with these summaries being confirmed as accurate reflections of interviews by interviewees.
- 10.8 In total, 15 responses from Customers (nine from the healthcare sector⁶⁴² and six from the hospitality sector⁶⁴³) and 8 responses from Self-suppliers (three from the healthcare sector⁶⁴⁴ and five from the hospitality sector⁶⁴⁵) were obtained representing a response rate of 75% and 73% respectively. Not all respondents provided information in relation to all questions contained in the Commission's questionnaires and this is reflected in the analysis below. Table 21 and Table 22 present profiles of Customers and Self-suppliers that responded to the Commission's questionnaires.

Table 21: Profile of Customers that provided responses

Sector	Hospitality	Healthcare	Total
	6 (40%)	9 (60%)	15
Service provider⁶⁴⁶			
Berendsen	2 (40%)	3 (60%)	5
Kings Laundry	5 (50%)	5 (50%)	10
Other	3 (60%)	2 (40%)	5

Source: The Commission's analysis

⁶⁴⁰ 9 in the hospitality sector and 11 in the healthcare sector. See footnote 21 for the full list of contacted Customers.

⁶⁴¹ 6 in the hospitality sector and 5 in the healthcare sector. See footnote 23 for the full list of contacted Customers.

⁶⁴² These are the [...].

⁶⁴³ These are [...].

⁶⁴⁴ These are [...].

⁶⁴⁵ These are [...].

⁶⁴⁶ Four Customers use more than one service provider.



Table 22: Profile of Self-suppliers that provided responses

Sector	Hospitality	Healthcare	Total
	5 (62.5%)	3 (37.5%)	8
Previously purchased flat linen rental and maintenance services			
Yes	2 (100%)	0 (0%)	2
No	3 (50%)	3 (50%)	6

Source: The Commission's analysis

Summary of responses provided by Customers

10.9 The Commission assessed and summarised Customers' responses with a summary presented in paragraphs 10.10 to 10.36 below.

Services, pricing structure and terms of contracts

10.10 All 13 Customers that responded indicated that they opt for a service package that includes both the rental and maintenance of flat linen. Some customers purchase a mix of services (e.g., maintenance only service for some items (e.g. towels) and rental and maintenance service for other items (e.g. bed linen). Typical items rented by respondents include bed linen, table linen, towels and scrub suits (for healthcare sector Customers).

10.11 When asked about the pricing structure applied by linen laundries, all 13 Customers said that they are charged on a fee per item basis.

10.12 In relation to the term of contracts, 8 Customers (5 healthcare sector Customers, 3 hospitality sector Customers) indicated that the normal length of contract is three years, with four of these (2 healthcare sector Customers, 2 hospitality sector Customers) mentioning that there is an option of a contract extension. 4 Customers (2 healthcare sector Customers, 2 hospitality sector Customers) indicated that they have rolling annual contracts and one healthcare sector Customer noted that its contract was for 2 years.

Tenders and quotations

10.13 The Customers have also been asked whether they tender their requirements for flat linen rental and maintenance services or whether they seek quotations for those services.

10.14 13 responses were received and 11 Customers indicated that they use a tender process (8 healthcare sector Customers, 3 hospitality sector Customers), one hospitality sector Customer indicated that it seeks quotes and one hospitality sector Customer said that it had no formal process recently and that bilateral negotiations are conducted with their current supplier. One healthcare sector Customers explained that while it uses formal procurement, their last ITT was issued several years ago. Another healthcare



sector Customer indicated that their latest contract renewal was made by mutual agreement with its current supplier of flat linen rental and maintenance services.

- 10.15 One healthcare sector Customer indicated that they typically tender the services on a regional basis. One hospitality sector Customer noted that the last time it issued an ITT, the decision was made to consolidate the purchase of flat linen services from a single provider (previously individual hotels were purchasing services from different suppliers). The decision to give the contract to one supplier was made for convenience of dealing with one provider, and to obtain better price.

Main criteria used when choosing a provider of flat linen rental and maintenance services

- 10.16 The typical criteria used by the customers when selecting a provider of flat linen rental and maintenance services is quality of linen, frequency of delivery, price and quality of service. The importance of pricing is evidenced by the following quotes:

“that pricing would never be weighted less than 50%”⁶⁴⁷.

“pricing accounted for 40% of the marks with other criteria related to quality of service making 60% of the marks”⁶⁴⁸

“pricing (40% of marks) was important, but not the sole determinant”⁶⁴⁹.

- 10.17 14 Customers outlined their criteria used for selecting linen laundries, five (four healthcare sector Customers and 1 hospitality sector Customers) said they carry out site inspections and four (all healthcare sector Customers) mentioned that regulatory standard must be complied with. Another healthcare sector Customer noted that infection control and service level agreement is a “must have” requirement. Table 23 illustrates examples of detailed criteria provided by respondents when selecting a provider of flat linen rental and maintenance services.
- 10.18 Two healthcare sector Customers, highlighted the importance of previous experience with one saying that previous experience in healthcare is essential and the other saying that one of its requirements included 3-year minimum experience criteria. This Customer also noted that they want the successful applicant to have experience managing linen/laundry/associated services for hospitals that are similar to them in terms of size.

Table 23: Examples of criteria used in selection of provider of flat linen rental and maintenance services

Example A		Example B	
Ultimate Cost	40%	Cost	20%
Product Quality	25%	Innovation/CI	20%
Operational/Technical Infrastructure	15%	Quality of Service	20%

⁶⁴⁷ See the Commission’s phone record with minutes of meeting with [...] dated 6 December 2018.

⁶⁴⁸ See the Commission’s phone record with [...] dated 19 December 2018.

⁶⁴⁹ See the Commission’s phone record with [...] dated 7 January 2019.



Example A		Example B	
Contract Specific Knowledge	5%	Proposed Mobilisation	10%
Data Management	5%	Auditing Tool	10%
Contract Delivery Model	5%	Management Methodology	10%
Business Continuity Plan	5%	Presentation	10%

Source: The Commission's analysis based on information provided by Customers.

- 10.19 In response to a question on the importance of the location of flat linen rental and maintenance services provider's facility when selecting service providers, from the 14 responses received, 10 Customers said that the location of the linen laundry's facilities was not important, once they could guarantee delivery, and four said it was important to some extent, (3 healthcare sector Customers, 1 hospitality sector Customer). Of those who mentioned it was important to some extent, two healthcare sector Customers indicated it was important in the context of contingency plans and one healthcare sector Customer said it was important because of the daily delivery requirement.

Switching providers

- 10.20 The Commission then asked questions on the ease/difficulty of switching between providers of flat linen rental and maintenance services.
- 10.21 8 (5 healthcare sector Customers, 3 hospitality sector Customers) responses were received in relation to the ease of switching while in contract. Five (3 healthcare sector Customers, 2 hospitality sector Customers) indicated that it was relatively easy to switch and one (healthcare sector Customer) said that it would be difficult, but not unachievable with no financial penalties, whereas two Customers said it may incur penalties for breach of contract.
- 10.22 12 (8 healthcare sector Customers, 4 hospitality sector Customers) responses were received in relation to ease of switching at the end of a contract. All, bar one, indicated that it was easy to switch. One healthcare sector Customer that did not find it easy to switch indicated that in general, switching provider is a significant task and they require their current service provider to give a 3-month notice if it decides to cease provision of services to them.
- 10.23 Of those Customers who mentioned that it was easy to switch, one made reference to payments for the unused linen stock and another mentioned that it takes up to 3 months to replace the linen stock of one supplier with the stock of another supplier. However, they noted that there are instances where, as a result of the tender, they changed suppliers and no service disruption occurred during the switching period. Therefore, overall, it was perceived that switching provider is relatively easy.
- 10.24 The Commission also asked whether Customers switched their provider of outsourced flat linen rental and maintenance services in the period from 1 January 2014 to 31 December 2017, 12 responses were received and eight⁶⁵⁰ indicated that they switched in this period, (5 healthcare sector Customers, 3 hospitality sector Customers). The HSE

⁶⁵⁰ One other Hospitality respondent said that they switched from Celtic Linen to Kings Laundry, but said it was 6/7 years ago.



indicated that there were instances where, as a result of a tender process they changed suppliers to certain hospitals.

- 10.25 Of the other four healthcare sector Customers that responded to this question, three switched to Kings Laundry⁶⁵¹, two from Celtic and one from CWS-boco, and one switched from Celtic to Berendsen. Two hospitality sector Customers switched to Kings Laundry (one from Celtic Linen and another from CWS-boco and Premier Linen). The reason given for the switch was that one customer was moving to one provider for all their hotels and the other Customer switched due for better quality of service and price. The third hospitality customer that switched, switched one hotel to OCL, the main reasons cited were price and keeping diversification of suppliers.

Likelihood of Switching to an OPL

- 10.26 When asked whether Customers self-supplied (i.e., had an OPL in the past), of the 14 responses received, 11 Customers stated that they did not self-supply in the recent past⁶⁵². Of three Customers that previously had OPL (two healthcare sector Customers and one hospitality sector Customers); one healthcare sector Customers said that it did self-supply, but stopped due to high costs. [...] said that [...]. A hospitality sector Customer noted that 1 or 2 of its hotels currently self-supply linen laundry services, but that they intend to outsource these services.
- 10.27 The Commission also sought information on the possibility of switching to an on-premise laundry in response to a 5% - 10 % price increase of flat linen rental and maintenance services. Of the 13 responses received in relation to this question, all 13 said that switching to an on-premise laundry would not be a viable option. The main reasons given include:
- Customer sites were unsuitable to host OPL facilities due to a lack of space required for such a facility;
 - There are substantial costs associated with switching to self-supply including (but not limited to): purchasing linen stock, equipment required for maintaining linen, OPL staff and other operational costs (e.g., electricity); and
 - lack of expertise in operating a laundry.

Likelihood of Switching to a wash-only launderette

- 10.28 In relation to the question of the possibility of switching to wash-only launderettes in response to a 5% - 10 % price increase of flat linen rental and maintenance services, of the 12 responses received in relation to this question, all 12 Customers said that switching to wash-only launderettes would not be a viable option. The main reasons cited include:
- Wash-only launderettes may not meet the necessary procedures/standards regarding infection control;

⁶⁵¹ All three are private healthcare customers.

⁶⁵² One healthcare sector Customer said that it might have had an OPL many years ago.



- Wash-only launderettes might not have sufficient capacity to handle the volume of linen required by Customers;
- the investment in linen stock that would be required if Customers were to purchase maintenance-only services.

Closest competitors of the parties

10.29 In response to the question on who are considered the closest competitors to the parties, 13 responses were received. Celtic Linen was the most frequently mentioned linen laundry with no other linen laundries mentioned by Healthcare sector customers. Healthcare sector customers indicated the following:

- [...] said that Celtic Linen was the main competitor of Berendsen; and
- [...] said that in the last tender Berendsen came distant second and Celtic Linen third and that they were not aware of any other laundry that could provide services to them⁶⁵³.

10.30 Hospitality sector Customers mentioned several linen laundries including Celtic Linen, OCL, and to a lesser extent CWS-boco and Sovereign Linen. One hospitality sector customer mentioned that Berendsen is not well known for serving customers in the hospitality sector and that it might [...]. In relation to smaller laundries (e.g., Premier Linen), this Customer noted that it would have reservations whether they can provide service quality similar to that of larger linen laundries. In addition, it also indicated that it would be reluctant to become the largest customer of a small laundry. Another hospitality sector Customer said that Berendsen, Kings Laundry, OCL and Celtic Linen submitted bids in response to its ITT. Lilliput told this Customer that it does not provide services in the State and did not submitted a bid. Ultimately, Celtic Linen won the tender. OCL was considered to be a good contender in the ITT and Customer had no concerns regarding their ability to deliver the required services.

Potential impact of the Proposed Transaction

10.31 Finally, Customers were asked to express their opinion about the Proposed Transaction and its possible impact on competition in the market⁶⁵⁴ as well as prices of the flat linen rental and maintenance services. Table 24 illustrates Customers' views on the Proposed Transaction. In total 13 responses (8 healthcare sector Customers and 5 hospitality sector Customers) were received.

Table 24: Customers' views on the potential impact of the Proposed Transaction

	Healthcare sector	Hospitality sector	Total
Don't know	0	1	1
Uncertain	0	1	1
No impact	1	2	3
Potentially negative	1	0	1
Negative	6	1	7

⁶⁵³ Kings Laundry is their current provider.

⁶⁵⁴ Self-suppliers' were expressing views about competition in their respective sectors.



Source: The Commission's analysis based on views expressed by Self-suppliers

- 10.32 The main concerns expressed by Customers related to a reduction in competition and in particular for some healthcare customers the fact that the market structure will change (i.e., the number of suppliers will decrease from 3 to 2). It was also mentioned by a healthcare customer that if Celtic Linen were to go bankrupt, there will be a monopolist supplier of flat linen rental and maintenance services in the healthcare market. One healthcare sector Customer mentioned a potential reduction in quality of service. This Customer noted that Kings Laundry would have been the third largest player in the healthcare market and post-transaction there will just be two remaining players. Another healthcare sector Customer was of the view that Kings Laundry was trying to expand and may have tendered for the supply of linen, laundry and associated services for them in the future.
- 10.33 Hospitality sector Customers expressed lower level of concerns, with some saying it would have no impact and others saying it could be negative or positive. One hospitality sector Customer that thought the Proposed Transaction would have a negative impact on competition, noted that Kings Laundry is a dominant supplier in the hospitality sector and opined that Berendsen would likely to have an incentive to increase prices if the Proposed Transaction was put into effect
- 10.34 In relation to the question of the impact of the Proposed Transaction on the price of flat linen rental and maintenance services, 9 responses (6 healthcare sector Customers and 3 hospitality sector Customers) were received.
- 10.35 Of the six healthcare sector Customers, three Customers said they think prices would go up and two mentioned there would be less competition. One healthcare sector Customer said that if the parties were to try imposing higher prices, they would need to meet and negotiate terms and conditions of provided services and also look for potential alternative providers. Of the three Hospitality sector Customers one said that they would expect prices to increase, one said that it had some concerns about potential price increase and one said that it would expect no change.
- 10.36 No other concerns were identified by the Customers, with some of them reiterating that the Proposed Transaction will result in the reduction of competition. When asked whether any signs of co-ordination between linen laundries were observed when receiving bids/quotations, Customers noted that they did not see any signs of coordination.

Summary of responses provided by Self-suppliers

Description of OPLs

- 10.37 The Commission asked Self-suppliers to describe the equipment used in their OPLs. Table 25 indicates that all Self-suppliers have washing machines, tumble dryers, ironers/rollers and folders in their OPLs. All Self-suppliers own linen items.

Table 25: Equipment used in OPLs



[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
8 washing machines, 3 tumble dryers, 1 tunnel finisher and 2 ironing machines	4 washer extractors, 5 washing machines, 1 barrier washer, 5 Tumble dryers, 5 Ironers, 2 Bed sheet folders, 1 Shrink Wrap Machine	4 washing machines, 4 dryers, 1 ironer, 1 folder	3 dryers, 3 washing machines and 1 large roller	washing machines, laundry, roller, iron	The hotel has 3 washing machines, 5 Dryers, one roller, and an automatic folder.	The facility is stand alone, it consists of a roller, four dryers, four washing machines.	Six washing machines, Six tumble dryers, 1 Bed sheet ironer/folder, 1 towel ironer

Source: The Commission's analysis based on information provided by Self-suppliers

10.38 Only one out of 8 responding Self-suppliers noted that it provides flat linen and rental services to external third parties. In this regard, Merrion Hotel noted that it does linen laundry for a neighbouring restaurant. However, this was only possible, because it is a relatively small job⁶⁵⁵.

Costs of operating OPLs

10.39 Three Self-suppliers were able to provide estimates of operating OPLs. One hospitality Self-supplier noted that its annual OPL operating costs are circa €120,000. Two healthcare Self-suppliers noted that their OPL operating costs are in excess of €1 million. The major categories of operating costs cited by Self-suppliers were labour, utility costs (e.g., electricity) and linen stock replacement.

Reasons for switching to OPLs

10.40 2 out of 8 Self-suppliers (both from the hospitality sector) noted that they have previously purchased outsourced flat linen rental and maintenance services. Both Self-suppliers indicated that they switched to OPLs primarily due to insufficient level of service quality provided by linen laundries (e.g., delayed deliveries and/or linen cleanliness not meeting required standards) rather than high prices.

10.41 Both hotels switched to OPLs as part of a wider exercise of hotel refurbishment/extension. Both hotels noted that setting up OPLs required significant financial investments. In this regard, [...] was of the view that smaller hotels could never afford to set up OPLs. It also noted that most hotels don't have the room to expand or built a dedicated laundry facility, which is a big constraint.⁶⁵⁶ [...] noted that it switched to self-supply because the opportunity to extend the hotel came up. Without the space they never would have switched to OPL.

⁶⁵⁵ See the Commission's phone record with [...] dated 24 January 2019.

⁶⁵⁶ See the Commission's phone record with [...] dated 24 January 2019.

Intentions to switching from OPLs

- 10.42 One out of 8 Self-suppliers (Self-supplier from the healthcare sector) indicated that it considers switch to outsourced flat linen rental and maintenance services, but noted that concrete details of OPL closure are not established yet.

Potential impact of the Proposed Transaction

- 10.43 Table 26 illustrates Self-suppliers' views on the Proposed Transaction. The majority of Self-suppliers' that expressed views on this matter (5 out of 7) noted that the proposed Transaction will not affect competition in healthcare and/or hospitality markets⁶⁵⁷. One Self-supplier from the hospitality sector did not have strong views, but noted that the reduced number of competitors could lead to an increase in prices in the hospitality market. Two Self-suppliers from the hospitality sector opined that if the merged entity were to increase its prices, the option of self-supply could become a viable alternative, particularly for larger hotels.

Table 26: Self-suppliers' views on the potential impact of the Proposed Transaction

	Healthcare sector	Hospitality Sector	Total
Don't know	1	0	1
No impact	2	3	5
Potentially negative	0	1	1

Source: The Commission's analysis based on views expressed by Self-suppliers

- 10.44 Self-suppliers in the healthcare sector noted that the Proposed Transaction did not affect them directly and thus, have relatively limited views on the impact of the Proposed Transaction on competition in the healthcare market.

⁶⁵⁷ Self-suppliers' were expressing views about competition in their respective sectors.



11. APPENDIX 2 – THE AMÁRACH SURVEY

- 11.1 The Amárach Survey conducted for the Commission by Amárach Research is presented alongside this Determination.



12. APPENDIX 3 – ECONOMIC REPORTS

- 12.1 The report titled “*Some observations on Frontier Economics’ ‘bidding markets’ argument*” conducted on behalf of the Commission by DotEcon Ltd. and the report titled “*EXTERNAL ECONOMIST STUDY FOR THE CCPC BERENDSEN (ELIS)/KINGS LAUNDRY (M/18/063)*” conducted on behalf of the Commission by PMCA Economic Consulting are presented alongside this Determination.⁶⁵⁸

⁶⁵⁸ That is the confidential version of this Determination issued to the Parties.

13. APPENDIX 4 – ORGANISATIONS WITH OPLS

13.1 This appendix provides an overview of organisations in healthcare and hospitality sectors that operate OPLs. The organisations referred to in this appendix were identified by the Parties and Competitors during the Commission's investigation. Thus, they do not represent the definitive list of all organisations with OPLs in the State.

13.2 Table 27 lists hotels and hospitals with OPLs.

Table 27: Organisations with OPLs

Organisation	Location	County	Size (in terms of beds)	Sector
[...]	[...]	Wexford	50-60	Hospitality
[...]	[...]	Wicklow	29	Hospitality
[...]	[...]	Wexford	78	Hospitality
[...]	[...]	Wexford	118	Hospitality
[...]	[...]	Dublin	270	Hospitality
[...]	[...]	Limerick	104	Hospitality
[...]	[...]	Dublin	142	Hospitality
[...]	[...]	Kilkenny	139	Hospitality
[...]	[...]	Kerry	244	Hospitality
[...]	[...]	Dublin	208	Hospitality
[...]	[...]	Dublin	192	Hospitality
[...]	[...]	Dublin	9	Hospitality
[...]	[...]	Kildare	39	Hospitality
[...]	[...]	Kilkenny	85	Hospitality
[...]	[...]	Limerick	89	Hospitality
[...]	[...]	Westmeath	35	Healthcare
[...]	[...]	Sligo	359	Healthcare
[...]	[...]	Limerick	75	Healthcare
[...]	[...]	Waterford	532	Healthcare
[...]	[...]	Galway	655	Healthcare
[...]	[...]	Drogheda	340	Healthcare
[...]	[...]	Kilkenny	285	Healthcare
[...]	[...]	Sligo	Unknown	Hospitality
[...]	[...]	Tipperary	Unknown	Healthcare
[...]	[...]	Kilkenny	285	Healthcare
[...]	[...]	Tipperary	Unknown	Healthcare
[...]	[...]	Tipperary	Unknown	Healthcare
[...]	[...]	Galway	Unknown	Healthcare

Source: The Commission's analysis based on information provided by the parties and Competitors

13.3 Table 28 illustrates instances when organisations switched from or to OPLs in the period from 1 January 2014 to 30 June 2018 known to the Commission. It shows that in the hospitality market there were 9 hotels that switched to OPLs while 2 hotels switched from OPLs to purchase of outsourced flat linen rental and maintenance services. In the healthcare market, the Commission is aware of only one instance where healthcare

organisation switched to OPL. There were 4 instances where healthcare organisations switched from OPLs to purchase of outsourced flat linen rental and maintenance services.

Table 28: Organisations switching from/to OPLs, 1 January 2014 to 30 June 2018

Hospitality customers switching to OPLs		Hospitality customers switching from OPLs		Healthcare customers switching to OPLs		Healthcare customers switching from OPLs	
Name	Turnover (in €000's)	Name	Turnover (in €000's)	Name	Turnover (in €000's)	Name	Turnover (in €000's)
[...]	€23.0	[...]	€37.0	[...]	Unknown	[...]	€38.0
[...]	€273.2	[...]	€18.0			[...]	€12.0
[...]	€53.7					[...]	€3.0
[...]	€77.2					[...]	€1.0
[...]	€97.1						
[...]	€15.0						
[...]	€45.0						
[...]	€57.0						
[...]	€11.0						

Source: The Commission's analysis based on information provided by the parties and Competitors

13.4 Table 29 lists recently opened hotels and one care centre that decided to purchase outsourced flat linen rental and maintenance services. It shows that several significant hotels (in terms of potential turnover from linen laundry's perspective) have decided not to build OPLs.

Table 29: Recently opened hospitals and care centres that purchase outsourced flat linen rental and maintenance services

Customer	Location	County	Size (in terms of projected revenue (in €000's))	Sector
[...] ⁶⁵⁹	[...]	[...]	[...]	Hospitality
[...]	[...]	Wexford	20	Healthcare
[...]	[...]	Dublin	200	Hospitality
[...]	[...]	Dublin	140	Hospitality
[...]	[...]	Dublin	120	Hospitality
[...]	[...]	Cork	40.8	Hospitality

Source: The Commission's analysis based on information provided by the parties and Competitors

⁶⁵⁹ [...] will open in 2019.

14. APPENDIX 5 – GLOSSARY

14.1 In this Determination, the following terms shall have the definitions set out below. Where it is helpful for the reader to reference a defined term in the text, such term may also be defined in the text.

Table 30: Glossary of frequently used terms

Term	Definition
Ashton Linen	Ashton Linen Service Limited
Amárach	Amárach Research
Berendsen	Berendsen Ireland Limited.
Carraig Linen	Carraig Linen & Laundry Services Limited.
CBP	Countervailing Buyer Power
Celtic Linen	Celtic Linen Limited.
CMA	The United Kingdom Competition and Markets Authority, previously the Competition Commission.
Commission	The Competition and Consumer Protection Commission.
Competitors	Linen laundries contacted by the Commission (apart from the parties)
Counterfactual	Assessment of the most likely competitive situation in the absence of the Proposed Transaction.
Customers	healthcare and hospitality customers contacted directly by the Commission
CWS-boco	CWS-boco Ireland Limited.
Dingle Linen	Dingle Linen Service.
EC	European Commission
Elis	Elis S.A.
First Competitor Questionnaire	Questionnaire issued by the Commission dated 14 September 2018 to potential competitors of the merging parties.

Term	Definition
First RFI	The Commission's Requirement for Further Information dated 14 September 2018 served on Berendsen and Kings Laundry, pursuant to section 20(2) of the Act.
flat linen	flat linen is an industry term describing offered linen products including flat-ironed bed sheets, pillowcases and tablecloths. In this Assessment this term also includes items such as towels, bath robes, scrub suits and other miscellaneous items.
GUPPI	Gross Upward Price Pressure Index
healthcare customers	Organisations in the healthcare sector in the State purchasing flat linen rental and maintenance services.
HHI	The Herfindahl-Hirschman index
hospitality customers	Organisations in the hospitality sector in the State purchasing flat linen rental and maintenance services.
HSE	The Health Service Executive
IPR test	Indicative Price Rise test
ITT	Invitation to tender
Kings Laundry	Kings Laundry Limited, a private limited company registered in the State.
Lilliput	Lilliput (Dunmurry) Limited.
Limavady Linen	Limavady Linen Services Ltd.
Limerick Laundry	Limerick Laundry & Dry Cleaning Services Limited.
Linencare	Linencare Laundries Limited.
linen laundry	Provider of flat linen rental and maintenance services in the State.
maintenance	The term maintenance refers to the collection and processing (i.e., sorting, washing, drying, ironing, folding and packing) of used and soiled items and the delivery of clean items. Items may also be repaired as part of maintenance.
Merger Notification Form	Merger notification form submitted by the parties to the Commission dated 7 August 2018 in respect of the Proposed Transaction.

Term	Definition
Millbrook Linen	Millbrook Linen Limited
NCA(s)	National competition authorities.
OCL	O.C.L. Laundry Services Limited.
OPL	On-premise laundry.
Phase 1	The investigation, by the Commission, of the Proposed Transaction to determine whether it will not lead to a SLC in any market for goods or services in the State.
Phase 1 Decision	The Commission's phase 1 decision dated 9 January 2019 to carry out the full investigation of the Proposed Transaction
Phase 2	A full investigation by the Commission of the Proposed Transaction following the Phase 1 Decision
Premier Linen	Premier Linen
PMCA	PMCA Economic Consulting
Questionnaire to Customers	Questionnaire issued by the Commission dated 24 September 2018 to customers purchasing flat linen rental and maintenance services
RABC	the risk analysis bio-contamination control
Report on Celtic Linen	Report on Celtic Linen submitted by the parties on 18 January 2019
Report on OPLs	Report on OPLs submitted by the parties on 18 January 2019
respondents	Organisations that participated in the Commission's Market Research
RFQ	Request for quotations
Second Competitor Questionnaire	Questionnaire issued by the Commission dated 12 February 2019 to competitors of the merging parties.
Second RFI	The Commission's Requirement for Further Information dated 12 February 2019 served on Berendsen and Kings Laundry, respectively, pursuant to section 20(2) of the Act.
Self-suppliers	Hotels and hospitals currently operating their own OPLs contacted directly by the Commission

Term	Definition
service providers	Providers of flat linen rental and maintenance services in the State.
SLC	Substantial lessening of competition
SSNIP	Small but significant non-transitory increase in price.
The Authority	the Commission's predecessor the Competition Authority
The Act	The Competition Act 2002, as amended.
The Amárach Survey	Independent piece of market research commissioned by the Commission and undertaken by Amárach Research.
The Assessment	The Commission's assessment of the Proposed Transaction issued to the Parties on 28 March 2019
The Commission's Merger Guidelines	"Guidelines for Merger Analysis" adopted by the Commission on 31 October 2014
The DotEcon Report	The report " <i>Some observations on Frontier Economics' 'bidding markets' argument</i> " conducted on behalf of the Commission by DotEcon Ltd.
The healthcare market	The market for the supply of outsourced flat linen rental and maintenance services to healthcare customers in the State.
The hospitality market	The market for the supply of outsourced flat linen rental and maintenance services to hospitality customers in the State.
The OFT	The Office of Fair Trading
The OGP	The Office of Government Procurement
The Parties	Comprises Berendsen and Kings Laundry.
The PMCA Report	The Report " <i>EXTERNAL ECONOMIST STUDY FOR THE CCPC BERENDSEN (ELIS)/KINGS LAUNDRY (M/18/063)</i> " conducted on behalf of the Commission by PMCA Economic Consulting
The Proposed Transaction	refers to the proposed transaction as notified to the Commission on 7 August 2018 whereby Berendsen would acquire sole control of Kings Laundry
The State	The Republic of Ireland
wash-only launderettes	Providers of linen maintenance services